DEFINITIVE STATEMENT,

ON THE PART OF

THE UNITED STATES,

OF THE CASE REFERRED,

IN PURSUANCE OF THE

CONVENTION OF 29TH SEPTEMBER, 1827,

BETWEEN THE SAID STATES AND

GREAT BRITAIN,

TO HIS MAJESTY

THE KING OF THE NETHERLANDS,

FOR HIS DECISION THEREON.

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ERRATA.

Definitive Statement.

Page 9, line 20—For "distnict," read "distinct."
14, " 9—For "nor" read "or."
38, " 40—For "the" read "her."
" " 41—Strike out "of Great Britain."
41, " 36—For "conditions" read "condition."
43, " 23—For "had" read "have."
44, " 25—For "therfore" read "therefore."
45, " 46—For "their" read "the."
48, " 50—For "unncessary" read "unnecessary."
50, " 32—Strike out "of."
51, " 44—For "of," at the end of the line, read "to."
53, " 33—Strike out "by."
59, " 6—For "possesion" read "possession."
90, " 50—For "in" read "on."
91, " 7—Strike out "that of."
92, " 7—For "East" read "West."

STATEMENT.

I.

NORTH-WEST ANGLE OF NOVA SCOTIA, &c.

§ 1.

PRELIMINARY OBSERVATIONS.

Preliminary Observations.

Some of the Preliminary Observations of the First Statement, on the part of Great Britain, appear to have been intended for the purpose of suggesting, that the treaty of 1783 ought to be interpreted by rules different from those universally recognised for the construction of treaties in general.

It is difficult to understand, for what other purpose it is asserted, that a Boundary established between the United States and the remaining British Provinces, and therefore common to both, "was made in reference to the boundaries of the *Provinces relinquished*, and not in reference to those which remained under the sovereignty of the King:" an assertion which appears still more extraordinary, when it is recollected, that the description in the treaty of the Boundary in question, is almost literally borrowed from that of the boundaries theretofore assigned by Great Britain to the Provinces of Nova Scotia and Quebec.

Another assertion equally uncalled for, is, that the relative position of Great Britain to the United States, at the time of negotiating the Treaty of 1783, (or the Provisional Articles of Nov. 1782,) was that of "a Mother Country treating with Colonies not yet recognised as independent;" and that "from the period of the cession by France of the Province of Canada in 1763, to that of the peace of 1783, the whole of that portion of N. America belonged to Great Britain."

It might with equal propriety be asserted, that all the United Provinces of the Netherlands had belonged to Spain till the treaty of Westphalia. It is notorious and in proof, that the United States refused to open a negotiation with Great Britain, until their independence had been previously actually recognised; and that Richard Oswald, the Commissioner appointed on the part of Great Britain, was accordingly, by his Commission dated 21st September, 1782, authorized to treat with any Commissioners or persons vested with equal powers by and on the part of *the thirteen United States of America;* his former commission of the 7th of August preceding, appointing him to treat with any Commissioners, named or to be named by *certain Colonies or Plantations* therein specified, being at the same time expressly revoked by his said second commission. (*a*)

The acknowledgment of the independence of America was only the recognition of an existing fact: an acknowledgment not wanted by the United States, in order to establish the fact, but which, by putting an end to the war, was highly important to them; and, it may be presumed, not undesirable to Great Britain.

(*a*) Written Evidence, No. 9 (*a*)

Preliminary Observations.

All claims to the territorial rights of the United States are relinquished, on the part of Great Britain, by the same article which acknowledges them to be independent States.

This relinquishment, which was a necessary consequence of their independence, is entire, complete, and without any restriction or exception. The Contracting Powers proceed then, in the Second Article, and in order to prevent disputes, which might arise from their uncertainty if not expressly described, to declare and define the actual boundaries, as resulting from that relinquishment. It follows, therefore, that this Second Article is subject to no other rule of construction, but such as are admitted to apply to any Treaty concluded between equal and independent nations.

The principal object, however, of the Preliminary Observations of the British Statement is to suggest, that, the whole subject of boundaries being involved in obscurity, and the Negotiators having been unable to define them with sufficient accuracy, the very terms of the treaty manifest the uncertainty of the Negotiators, and it is necessary to appeal from its letter to what is called its spirit and their intentions.

Whatever uncertainty may, from the first instructions of Congress, be presumed to have existed in that body, respecting the true boundaries of Massachusetts' Bay, is evidently to be ascribed to the want of a sufficient investigation of the Charter of that Province, and of the other Public Acts of Great Britain, affecting the subject, which have been stated at large in the first American Statement. And it is equally evident, that, whatever may have been the cause of that uncertainty, there was none in that respect on the part of the framers of the Treaty.

In obedience to those instructions, the alternative was in the first instance offered, either to declare the River St. John to be the Boundary, or that the true line between Nova Scotia and the United States should be settled by Commissioners, as soon as conveniently might be after the war. The last alternative would undoubtedly have been adopted, had there been any uncertainty on the part of the Negotiators, and had they thought it *absolutely impossible* to lay down with sufficient accuracy the several points and lines of the Boundary in question. Instead of which, after a due investigation of the Charter and other Public Acts of Great Britain, they ultimately agreed, not to leave the subject in that state of uncertainty in which the proposed reference to Commissioners would have placed it, but actually to define the boundary in conformity with the provisions of that Charter, as modified or explained by those other several Public Acts.

A doubt indeed afterwards arose, which it became necessary to settle by a special commission, with respect to the true River St. Croix. Relying on the use of Mitchell's Map, the American Negotiators had expected that no question could arise even as to that point. But, in reference to that portion of the boundary which is now alone the subject of discussion, the terms of the Treaty are neither uncertain nor obscure, but on the contrary equally clear, precise, and appropriate.

The North-west Angle of Nova Scotia, as claimed by the United States, is, in strict conformity with those terms, on highlands which actually divide the rivers that empty themselves into the River St. Lawrence from the waters of the Ristigouche. And the boundary line, as claimed by them, extends thence, through its whole extent, to a certain source of the Connecticut River, along highlands which actually divide rivers that empty themselves into the River St. Lawrence from the waters of the Ristigouche, the St. John, the Penobscot, the Kennebec, the Androscoggin, and the Connecticut; all which rivers, as the United States contend, fall into the Atlantic Ocean.

Mars' Hill, which Great Britain pretends to be the North-west Angle of Nova Scotia, is acknowledged by her to be a highland which neither divides, nor is within one hundred miles of any highland that does actually divide, rivers that empty them-

selves into the River St. Lawrence, from any other river or rivers whatever. And it is likewise acknowledged, on her part, that the boundary line, claimed by her, is, from that point, and through three-fifths of its extent, along highlands which do not actually divide rivers that empty themselves into the River St. Lawrence, from any other river or rivers whatever. Preliminary Observations.

The question at issue between the two Governments therefore is, whether the terms of the Treaty, which describe the North-west Angle of Nova Scotia and the boundary line from that point to a source of the Connecticut River, as being respectively on and along the highlands, which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, are susceptible of the following interpretation, viz: that the North-west Angle of Nova Scotia and the said boundary line, for three-fifths of its extent, may be respectively on and along highlands, which do not actually divide the rivers as above specified.

In order to sustain her extraordinary pretension, it was incumbent on Great Britain, before she proceeded to search for the intentions of the Negotiators, to prove, in the first place, that the terms of the treaty were susceptible of the interpretation which she ascribes to them.

Instead of pursuing this course, not a single argument is adduced, in the British Statement, to sustain the main position on which the pretension of Great Britain is founded. No attempt is made to prove, that the terms of the treaty can be so interpreted, as to mean the reverse of what they express. And it is because those explicit terms are wholly irreconcilable with her pretensions, that Great Britain is compelled to suggest, as has been done in the Statement on her part, an appeal from the letter of the treaty to what is very improperly called its spirit, and to certain intentions which, it will be found, have been most gratuitously ascribed to the framers of the treaty.

Admitting that there was some foundation for the several objections contained in the British Statement: admitting, which is altogether denied, that the term "Rivers which fall into the Atlantic Ocean," is, in that sentence, of doubtful import, and, what is equally unfounded, that the term "Highlands" implies a character which does not attach to the ground over which the American line extends: yet, the place claimed by Great Britain, as the North-west Angle of Nova Scotia, and three-fifths of what she asserts to be from that point the boundary line, would still be on grounds, or Highlands, other than those proscribed by the express terms of the treaty.

This observation would of itself be a satisfactory answer to all those objections. It is a matter of regret that they cannot be fully examined and refuted, without entering into details, which will extend this Reply much beyond what was desirable or had been anticipated. But although the course, thus forced upon us, may be attended with the inconvenience of giving an appearance of complexness to a question most simple and clear in itself; the investigation will at least have the advantage of exposing, in a striking manner, the arguments which must be resorted to, in the attempt to sustain the pretensions of Great Britain, and of placing in a still stronger light the solidity of the right of the United States to the contested territory.

The observations in the British Statement embrace the following points, viz:

A general assertion, that the framers of the treaty of 1783, intended to give to each Power the entire possession of the rivers which have their mouths within their Dominions, respectively.

The geographical signification of the term "Atlantic Ocean."

The effect which the designation of the Bay of Fundy and of the Gulf of St. Lawrence, by their specific names, in one sentence, may have on the term "Rivers which fall into the Atlantic Ocean," in another sentence of the treaty.

The inductions which may be drawn, in reference to the same term, from the negotiations of 1782, and from the Canadian origin of a certain grant of land known by the name of "Fief of Madawaska."

Preliminary Observations.

The signification of the term "Highlands," and the character of those claimed by both Powers respectively.

The Acts of both Parties, and the opinions expressed by some of their officers, in relation to the contested territory, subsequent to the treaty of 1783.

Those several points will be successively investigated; always recollecting, however, that they do not affect the main question at issue, to which we will afterwards revert.

FIRST PART.

OBJECTIONS TO THE AMERICAN LINE EXAMINED.

§ 2.

GENERAL ARGUMENTS APPLICABLE TO BOTH THE BAY OF FUNDY AND THE GULF OF ST. LAWRENCE.

Rivers intersected.

The first effort in the British Statement, to prove that the rivers described, in the Treaty, as falling into the Atlantic Ocean, do not include those that empty themselves into the Bay of Fundy and the Gulf of St. Lawrence, consists in an appeal to certain pretended intentions of the framers of the treaty, in the following words:

"There being between them, (Canada and Nova Scotia,) at the period of the treaty of 1782–3, no certain and acknowledged Boundary, no man knew where the north-west angle of Nova Scotia really was; and the negotiators of the treaty proceeded *by other modes* to describe the intentions of their respective Governments, which were, to give to each Power the entire possession of the great rivers which have their mouths within their dominions respectively."

That there were certain and acknowledged boundaries between Canada and Nova Scotia, at the period of the treaty, and that the reference in it, to the north-west angle of Nova Scotia, could not have been made, had not this been a point previously determined, has been conclusively established in the First American Statement. No man, indeed, knew the spot of ground where that angle would be found; but, in order to ascertain this, nothing more was believed, at the date of the treaty, to be required, than the operation of surveying the line, to be drawn due North from the source of the River St. Croix, till it met the dividing highlands. And admitting the unfounded supposition, that there was at that time any uncertainty with respect to those highlands, it is most certain, that the negotiators of the Treaty resorted to no other modes to describe the intentions of their respective Governments, than that of defining the boundary in the Treaty itself.

The assertion is inferred, from what is called the *rationale* of the case, and from the preamble of the preliminary articles of 1782.

The *rationale* of the case consists in saying, that, "by the treaty, the River St. Croix, which is described as having its mouth in the Bay of Fundy, is expressly assigned as the extreme eastern limit of the United States;" and that, "in the meridian of the source of this River, is placed the point of departure for the whole line of boundary, which is to be thence traced westward." Whence it is inferred:

1st. That "It was evidently determined, in this very important part of the boundary, to divide from each other, at their sources, the several great rivers assigned to each power. Such intent, the expression 'highlands which divide,' plainly denotes; for what could be the object of selecting highlands at all in reference to rivers, if these

rivers were to be divided by the Line of Boundary indiscriminately, either at their sources, or in any part of their course?" Rivers intersected.

2dly. That "the St. Croix being the extreme eastern limit of the United States, the only rivers which could have been intended to have been thus divided, were *surely* those which empty themselves between the meridians of St. Croix, eastward, and of the head of the Connecticut River, westward; thus securing to the United States the whole of each river emptying within their own territory, and to Great Britain the whole of each river emptying within her territory."

In the first of those inferences, the term "to divide" is used in two different senses. Where it first occurs, and as applied to the highlands, it means, to separate the sources of one class from the sources of another class of rivers. In the next sentence, and as applied to the due North line, it means, to cross or intersect one and the same river.

And thus, because the Boundary, extending westwardly from the north-west angle of Nova Scotia to the source of Connecticut River, was to *separate* from each other, *at their sources*, the several rivers falling respectively into the River St. Lawrence, and into the Atlantic Ocean; it is inferred, that it was intended that none of those rivers should be *intersected* in any part of their course, by another and distinct portion of the boundary.

The second pretended inference is only a repetition of the assertion intended to be proved. There is no connection between the fact, that the sources of the rivers to be divided, lie westward of the meridian of the source of the St. Croix, *east* of which the United States can claim no territory, and the assumed conclusion, that the United States cannot claim that portion of the country watered by those rivers, which is situated *west* of that meridian.

The United States contend, that the intention of that clause of the treaty is precisely what it purports to be, viz. that the boundary line should, through its whole extent from the north-west angle of Nova Scotia to the head of Connecticut River, divide from each other the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; that this imperative clause, thus to divide the said rivers, applies exclusively to that particular part of the Boundary thus precisely defined; that it does not prescribe, either to divide or not to divide rivers, nor contains any injunction whatever, with respect to any other portion of the Boundary between the two Powers; and that every other portion of the said Boundary is defined distinctly, and must be understood as thus defined, according to the terms in which each such portion is respectively described.

It is hardly necessary to advert to the pretended "anomaly which attends the line *destined to divide the St. John*, if an Atlantic River, *from the St. Lawrence Rivers*, namely, that that line would be absolutely obliged to cross the St. John in the middle of its course, in order to arrive at its source, for the purpose of dividing it from the rivers flowing into the St. Lawrence."

The line, which by the treaty is not only destined, but expressly directed, to divide the St. John from the St. Lawrence rivers, is that alone which extends from the north-west angle of Nova Scotia, to the head of Connecticut River; and the due North line from the source of the St. Croix, which does actually cross the St. John, is, in no manner whatever, directed, destined, or intended, to divide the tributary streams of that River from those that fall into the St. Lawrence.

But when it is added, that, if it had been intended, that the due North line should cross the River St. John, there can be no doubt that such a peculiarity would have been *specifically* adverted to; it must have been forgotten, that both the direction and length of a straight line are determined by the two points at its two extremities, so as to render any further description superfluous; and that, accordingly, although it was equally well known, that the Boundary along the parallel of the 45th degree of North

Rivers intersected. latitude would cross Lake Champlain, and that the southern Boundary would also cross the Mobile, those peculiarities were neither in the treaty, nor the negotiations, *specifically* adverted to. (*b*)

Some general expressions, in the preamble of the provisional articles, considerably modified in that of the definitive treaty, have been resorted to, as referring to the boundaries, and as proving that the negotiators had other boundaries in view than those which are expressly defined in the treaty.

That preamble was originally prefixed, in the same words, to the four articles agreed upon, on the 8th October, 1782, between Richard Oswald, Benjamin Franklin, and John Jay, and which are contained in the paper No. 1, enclosed in B. Franklin's letter, of 5th December, 1782. (*c*)

The 4th Article is in the following words:

"That the navigation of the River Mississippi, from its source to the Ocean, shall for ever remain free and open, and that both there, and in all rivers, harbors, lakes, ports, and places, belonging to his Britannic Majesty, or to the United States, or in any part of the world, the merchants and merchant ships of the one and the other, shall be received, treated, and protected, like the merchants and merchant ships of the sovereign of the country: that is to say, the British merchants, and merchant ships, on the one hand, shall enjoy in the United States, and in all places belonging to them, the said protection and commercial privileges, and be liable only to the same charges and duties as their own merchants and merchant ships; and on the other hand, the merchants and merchant ships of the United States, shall enjoy in all places belonging to his Britannic Majesty, the same protection and commercial privileges, and be liable only to the same charges and duties of British merchants and merchant ships, saving always to the chartered trading companies of Great Britain, such exclusive use and trade, and their respective posts and establishments, as neither the subjects of Great Britain, nor any of the more favoured nations participate in."

It is impossible not at once to perceive that the expressions used in the preamble, "principles of liberal equity and reciprocity," and, "partial advantages being excluded," *so that* "a beneficial and satisfactory intercourse between the two countries may be established," applied in the most direct, if not exclusive manner, to the clauses of the aforesaid 4th Article, which provide for a reciprocal, liberal, and beneficial intercourse between the two countries.

No such provision was inserted in the Preliminary Articles of November, 1782. Dr. Franklin, in his letter of 5th November, 1782, alluding to that omission, says, "The reason given for dropping the article relating to commerce, was, that some statutes were in the way, which must be repealed before a treaty of that kind could be well formed, and that this was a matter to be considered in Parliament." (*d*)

There being still an expectation, that an agreement might be made on that subject, the Preamble was suffered to remain in the Preliminary Articles. But when, after a long negotiation, which took place during the course of the year 1783, and the details of which may be seen in Dr. Franklin's Correspondence, (*e*) it was found that there was no longer any hope of establishing, as had been at first intended, a beneficial commercial intercourse between the two countries, and that, accordingly, no provision could be inserted in the treaty to that effect, the Preamble, which was applicable to that object, was considerably modified, omitting in the Definitive Treaty the most pointed, and preserving only the most general expressions.

(*b*) It cannot even be asserted, that the fact of the due North line crossing the River St. John, was not adverted to in the negotiations, since there is no account extant of the discussions which took place in that respect, subsequent to the rejection of the first project.

(*c*) Written Evidence, No. 9. (*a*)

(*d*) Dr. Franklin's 3d vol. page 285.

(*e*) Ibid. pages 321—371.

An allusion has also been made to the first sentence of the Second Article of the Definitive Treaty. Rivers intersected.

All claims to the territorial rights of the United States, and of every part thereof, having been relinquished by his Britannic Majesty, in the first Article; the second, *in continuation*, is thus expressed, viz: "*and* that all disputes, which might arise in future on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries."

It is obvious from the tenor of the Article, that the disputes on the subject of boundaries, intended to be prevented, were those which might have arisen, not from their not being every where equally convenient to both parties, but from their uncertainty, had they been left subject to the doubtful interpretation of the indefinite term "territorial rights," instead of being specially and precisely described.

The proper answer, however, to every inference attempted to be drawn from such general expressions, used in a Preamble, or as introductory, is, that their true intent can only be found in the actual conditions of the treaty, instead of deducing the meaning of those conditions from conciliatory expressions of vague import, which are usual and proper in most treaties of peace.

The general assertion, respecting the intentions of the framers of the Treaty, is not only unsupported by proofs, but it is disproved both by the avowed intentions of the negotiators, and by the various provisions of the treaty.

It has been conclusively shewn, in the First American Statement, that wherever it was practicable, and clearly with respect to the portion of the boundary under discussion, the boundaries were declared and designated by the treaty, not on any abstract principle, or arbitrary grounds, nor with a view to presumed convenience, but in exact conformity with the boundaries previously established by the public acts of Great Britain. (*f*) This having been the undeniable intention of the negotiators, and being incontestably proved by the coincidence of the expressions used in the treaty and in those acts, is alone a conclusive proof, that their object was not to assign to each Power the entire possession of those rivers, which had their mouths within their territories respectively.

This presumed intention is equally disproved by the decisive fact, that it was not adhered to, with respect to any other part of the Boundary.

From the Connecticut River to St. Regis, on the River St. Lawrence, the Boundary is a due west line, along the 45th parallel of North latitude, which crosses Lake Champlain, and several other tributary streams of the River St. Lawrence, leaving within the United States, the upper branches and the sources, and within the dominions of Great Britain, the mouths and lower portion of those streams.

From St. Regis to the western extremity of Lake Superior, all the rivers from the South, which fall either into the River St. Lawrence, or into the great lakes with which it communicates, are within the boundaries of the United States: Whilst all the rivers which, flowing from the South, fall into the River St. Lawrence below St. Regis, and all the rivers without exception, which flow from the North, either into the great lakes, or into that river, are, together with the mouth and sole outlet into the Sea of that immense body of waters, assigned to Great Britain.

All the inconveniences, with respect to navigation, or to a division, between the two Powers, of a country lying on the banks and waters of the same River, which are ascribed, by Great Britain, to the treaty boundary line, so far as it affects the River St. John, apply, with equal and greater force, to the River St. Lawrence, and to the extensive countries situated on its waters. And, on the principle she assumes,

(*f*) Viz: The Charter of Massachusetts' Bay, the Royal Proclamation of 1763, the Act of Parliament [Quebec Act] of 1774, and the Commissions of the Governors of Nova Scotia, to the year 1782.

Rivers intersected. she might, with equal consistency, justice, and adherence to the terms of the treaty, claim all the territory, on the South of the River St. Lawrence, and of its great reservoirs, which belongs to the United States, as she now does the upper half of the basin of the River St. John, which lies West of the line drawn due North from the source of the River St. Croix.

On the other hand, as it will be conclusively established in the course of this inquiry, that the upper basin of the St. John is, by the express terms of the treaty, within the boundaries of the United States; in what respect, on the principle she assumes, is the right of Great Britain to that territory better founded, than that of the United States to the lower basin, and to the mouth of that River; that is to say, to the most valuable part of the Province of New-Brunswick?

In the same manner the Southern boundary, from the banks of the Mississippi, extends to the source of the St. Mary's River, crossing, not far from their mouths, the great Rivers Mobile and Appalachicola, and numerous other considerable streams, leaving the mouths of all those rivers, together with a narrow slip along the sea coast, without the Boundaries of the United States; whilst the whole of the upper, or more than nine-tenths of the country watered by those rivers and their tributary streams, is, by the treaty, declared to be within their dominions.

The Rivers St. Croix and St. Mary, from their mouths to their sources; the River Connecticut, from its source to the 45th degree of North latitude; the Mississippi, from the latitude of the Lake of the Woods to that of the 31st parallel; the water communication between Lake Superior and that of the Woods; that Lake; a due West line from its North-western extremity to the Mississippi, and finally the due North line from the source of the River St. Croix to the Highlands, complete the description of the boundaries prescribed by the treaty.

Not a single portion of the Boundary is described by the treaty, as dividing from each other the rivers flowing in different directions; that alone excepted, which extends from the North-west angle of Nova Scotia to the North-westernmost head of Connecticut River.

The United States contend, that, through its whole extent between those two points, and in no other part of it, the Boundary line must divide the rivers as described in the Treaty.

And when Great Britain insists, that the intention of the negotiators was to divide the rivers, so as to assign to each Power, respectively, the whole country situated on those, the mouths of which were in their territories; it is for the purpose of drawing the extraordinary inference, that the only portion of the Boundary, which is expressly designated by the treaty as dividing, is precisely that which was intended, *not to divide* the rivers that empty themselves *into the River St. Lawrence*, from those that fall into the Atlantic Ocean.

Let it be further observed, that, with respect to the waters of the River St. John, the Boundary was established, and the British claim is now asserted in direct contradiction to the suggested intention. It was known to the framers of the treaty, as will appear by Mitchell's Map, that the due North line must necessarily cross the Western tributary streams of that river. The line does accordingly cross some of its waters, within two miles of the source of the St. Croix, and before it reaches Mars' Hill, no less than three of those tributary streams, viz: Bull's Branch, the River Meduxnekeag, and the Presqu'isle River. The country on the West and along thirty-eight miles of the due North line, watered by those three rivers, is acknowledged by Great Britain to be within the territories of the United States, although the mouth of that river is within her dominions.

Atlantic Ocean. Geographical practice is declared, in the British Statement, not to be the principal ground on which Great Britain rests her distinction, between the Bay of Fundy, (and

the Gulf of St. Lawrence,) from the Atlantic Ocean. Yet the references made in that Statement to common language and to public documents, respecting the use and effect of the specific names of the different parts of the Sea, render it necessary to shew, in the first instance, that the terms, "Rivers which fall into the Atlantic Ocean," considered independent of the effect which other parts of the treaty, or considerations drawn from other sources, may have on their meaning, do, where they occur in the treaty, embrace the rivers which fall into the said Ocean, through either of its two inlets, the Bay of Fundy and the Gulf of St. Lawrence. Atlantic Ocean.

It has never been disputed that, in their general geographical acceptation, the great divisions of the Sea embrace their subordinate subdivisions; nor that those subdivisions, including all inlets, bays and gulfs, are known by specific names. It cannot be denied, that, according to every rule of language, the generic term, when used alone, must be understood to embrace the subordinate subdivisions of the Sea or Ocean, known by that term; and that, when a specific name is used, it applies exclusively to the particular inlet, gulf or bay, designated by that name. When thus used apart from each other, there is neither confusion nor difficulty. The generic term embraces, the specific name designates, the subordinate inlets: each is used with propriety as the occasion may require.

No one can doubt that, when the Gulf of Finland, or the Adriatic, Hudson's Bay, or the Chesapeak, are specified by their distnict names, it is for the express purpose of considering them, for the time, apart and as respectively distinct from the Baltic, the Mediterranean, and the Atlantic: nor that, when the object is to designate with precision the situation of St. Petersburg, Venice, Amsterdam, or Baltimore, the particular inlet, gulf or bay, on which those cities are respectively situated, must necessarily be specified.

But this use of specific names does not at all prevent the use, or restrain the meaning of the generic terms, when there is occasion for them. Thus a British merchant, when speaking of the Mediterranean, or of the Baltic trade, always embraces that to Venice in the first instance, and that to St. Petersburg in the second. And thus, a voyage from an European port, whether to Baltimore, to Quebec, or to New-York, is always, and with equal propriety, called a voyage across the Atlantic.

The instances given in the 13th page of the British Statement are, therefore, irrelevant: nor is it perceived for what object Mitchell's Map has been appealed to, in reference to those general and specific designations. There are certainly on the American coast, two inlets of the sea, known by the names of "Bay of Fundy" and "Gulf of St. Lawrence;" and Mitchell's Map, in common with every other map, proves, in that respect, nothing more; unless indeed it should be inferred, that the much larger and more conspicuous characters of the words *Atlantic Ocean* had for object to represent it as a whole, of which the said bay and gulf were subordinate parts.

When the generic term "Atlantic Ocean," and the distinct name of one of its inlets, are used in the same sentence, either as united together, or as contradistinguished from each other, the term "main" is expressly prefixed to that "Atlantic," or implied; the signification of the general term is thereby restrained; and it must be so understood as to exclude the inlet thus distinctly designated. Of this mode of expression, several instances are given in the British Statement.

Thus, Governor Pownall describes the rivers having their sources amidst certain ridges, as falling into the Bay of Fundy, or into the *main* ocean. That expression means, that some of those rivers had their mouths as far east as the Bay of Fundy; and the word *main*, prefixed to *ocean*, clearly proves, that he considered that bay as part of the ocean.

Atlantic Ocean.

In the description of the boundary of East Florida, as defined by the Proclamation of 1763, the signification of the term "Atlantic Ocean" is, in the same manner, restrained, so as to exclude the Gulf of Mexico, and what is there called the Gulf of Florida; the word *main*, though not expressed as in the preceding case, being nevertheless necessarily implied.

There is, in this instance, a superfluous use of specific appellations. After having defined the land boundary, the residue would have been as explicitly and more correctly described, by simply saying, that the province was bounded on all other sides by the sea.

A striking instance of inaccuracy, arising from the same cause, is to be found in the article of a plan of a treaty with France, also quoted in the British Statement, in the following words: viz.

"The Most Christian King shall never invade . . . . . nor possess himself of Labrador, New Britain, Nova Scotia, Acadia, Canada, Florida, *nor* any of the countries, cities, or towns on the continent of North America; nor of the islands of Newfoundland, Cape Breton, St. John's, Anticosti, nor of any other island lying near to the said continent, in the seas, *or* in any gulf, bay, or river."

If, on account of the disjunctive, *or*, it may be inferred, that gulfs and bays are altogether distinct from, and not embraced by the general word *seas*, (*g*) it may equally be concluded from the word *nor*, in the first member of the sentence, that Nova Scotia, Canada, Florida, &c. are not countries on the continent of North America. Notwithstanding such inaccuracy, this and similar sentences must be construed as they were clearly intended; and the word *seas*, as meaning the "high seas," and in that particular sentence, excluding any inlet, gulf, or bay of the seas.

In that clause of the treaty, however, which is at this moment alone under consideration, the term "Atlantic Ocean" is not contradistinguished from, or united with, either of those, "Bay of Fundy" or "Gulf of St. Lawrence." It must necessarily, in its usual acceptation, and as the generic term, be understood there as including both those inlets, unless it can be shewn that, as is true with respect to some of its other geographical subdivisions, the term "Atlantic Ocean," when used alone, has been usually understood as excluding those two inlets.

Geographers have usually divided the whole of the seas into five great subdivisions: the Atlantic, the Pacific, the Indian, the Arctic, and the Antarctic Oceans; and when either of these are contrasted with each other, those great generic distinctions are admitted and proper. But the acceptation of terms, as generally used in common language, is the only proper guide in the interpretation of treaties; and there are several European seas, which, though embraced by the geographical definition, are commonly considered as not included within the term "Atlantic Ocean."

The Mediterranean and Black Seas were the first known to the ancient civilized nations; they were therefore the first which received special appellations: and that of Mediterranean has been used from the earliest times to distinguish the sea, still known by that name, from the sea without the straits, at first called *Ocean*, and now Atlantic Ocean. By a parity of reasoning, the Baltic, being a close sea, was from its first discovery considered under that name, as distinct from the ocean.

And although, as has already been shewn, (*h*) the Irish Channel and the North Sea are held, in correct geographical language, to be included in the general term "Atlantic Ocean," it is also true that the term "North Seas" is commonly used as comprehending both the Baltic and the North or German Sea; and that the term "Chan-

(*g*) The word *seas* is in this instance taken in the British Statement as synonymous, as it really is, to the Atlantic Ocean.

(*h*) Written Evidence, No. 6.

nel" has also been used as including both the "Manche" or British and the Irish Channel. Atlantic Ocean.

Long usage has consecrated those expressions; and it will therefore be admitted, that although geographers, in their great divisions of the Ocean, consider those several seas as parts of the Atlantic Ocean, they are generally, in common language, taken as distinct; so as to render it doubtful whether the term "Atlantic Ocean," used by itself in a public document, could be properly understood to include those inland seas But it may be confidently asserted, that in common language, as well as in its geographical acceptation, the term "Atlantic Ocean," when used alone, and its meaning is not restrained by some other expressions, has ever been held to embrace all the inlets, bays, and gulfs of the American coast; or, that if there has ever been any exception, it is solely that of the Gulf of Mexico.

Thus Governor Pownall, when speaking generally of the Atlantic Ocean, considers it as embracing even the Gulf of Mexico. "We know from observation how much higher the *Atlantic Ocean* is than the Pacific; and how *it is piled up* against the American coast *on the western shore of the Gulf of Mexico*, driven thither by the trade winds," &c.

Mr. Bouchette, Surveyor General of Lower Canada, in his topographical description of that province, (*i*) speaks of "the vast collections of fresh waters forming the chain of lakes, that, through the *channel of the St. Lawrence*, descend like another sea, to swell the bosom of the Atlantic." And again, "the River St. Lawrence . . . . . receives nearly all the rivers that have their sources in the extensive range of mountains to the northwards, called the Land's Height, that separates the waters falling into Hudson's Bay, still further to the north, from those that descend into the Atlantic."

In this last instance, the term "Atlantic" embraces both the River and Gulf of St. Lawrence. In the first, as the *channel* of the St. Lawrence can mean nothing but the River St. Lawrence, which empties itself into the gulf of the same name, that gulf is there again identified with the Atlantic.

In another place he says, "Beyond this range, at about fifty miles distance, is the ridge generally denominated the Land's Height, dividing the waters that fall into the St. Lawrence from those taking a direction towards the Atlantic Ocean. . . . . This chain commences upon the eastern branch of the Connecticut river, takes a north-easterly course, and terminates near Cape Rosier, in the Gulf of St. Lawrence." As the ridge there described commences on Connecticut River and terminates at Cape Rosier, the waters divided by that ridge from those that fall into the River St. Lawrence, embrace the rivers that empty themselves both into the Bay of Fundy and into the Gulf of St. Lawrence.

It is declared, in the Proclamation of 1763, to be the royal will, that no Governor of the colonies of Quebec, East Florida or West Florida should presume to grant lands beyond the bounds of their respective governments; "as also that no Governor or Commander in Chief of our other colonies or plantations in America, do presume, for the present, and until our further pleasure be known, to grant any warrant of survey or pass patents, for any lands beyond the head or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west."

Those other colonies, lying between those of Quebec and East Florida, extended along that line of demarcation beyond which it was forbidden to grant lands, from the north-easternmost sources of the River Susquehanna which lie north of the 42d degree, to those of the Altamaha River in 33 degrees of north latitude.

The space occupied along that line by the sources of the Susquehanna, Potomac,

(*i*) Written Evidence, No. 43.

Atlantic Ocean. James' River and Roanoke, and of their tributary streams, is more than one-half of the whole extent of the line. And of those four rivers, the three first named empty themselves into the Atlantic Ocean, through the bay of Chesapeake; and the Roanoke, through an inland bay, known by the name of Albemarle Sound, which has no communication with the sea, but through three narrow and shallow passes. It cannot therefore be doubted that in this instance, by rivers which fall into the Atlantic Ocean, those are meant which fall into its bays or inlets, as well as those which fall directly into the main ocean.

The following provision is found in the preliminary articles between France and Great Britain, of the 20th January 1783, and was acceded to by the United States: (*k*)

"That such vessels and effects as should be taken in the channel and in the north seas, after the space of twelve days, to be computed from the ratification of the said preliminary articles, should be restored on all sides. That the term should be one month from the channel and the north seas, as far as the Canary Islands inclusively, whether in the Ocean or in the Mediterranean; two months from the said Canary Islands as far as the Equinoctial line or Equator; and lastly, five months in all other parts of the world, without any exception, or any other more particular description of time or place."

In this instance the term "North Seas" must have been understood to include the Baltic: but, as a distinct term for the limitation of captures was assigned to the channel and the north seas, it was necessary to distinguish both by their special names; and no inference can thence be drawn, whether they were, or were not, understood to be distinct seas from the Atlantic Ocean.

As the same term is assigned for the Ocean and the Mediterranean, their being distinctly specified by their respective names proves, that they are there considered as distinct seas. But the term "Ocean," which, in reference to the coast of America, can only mean the Atlantic Ocean, is there made to comprehend all its other inlets and bays, without even excepting the Gulf of Mexico; since it was not deemed necessary to enumerate any of them specially.

Similar terms of limitation had in the negotiations at Ghent been, in the first instance, proposed by the American, and in substance agreed to by the British Plenipotentiaries. (*l*) To these the American Ministers proposed afterwards the following alteration: (*m*)

"The term to be fifteen days in the channel, in the north seas, in all parts of the Atlantic Ocean to the equinoctial line or equator, and in all parts of the Mediterranean. Two months in the Atlantic Ocean, to the latitude of the Cape of Good Hope, and three months in all other parts of the world."

In this, as in the former instance, the words "Atlantic Ocean" clearly embrace all its American inlets and bays, without excepting the Gulf of Mexico. In the alteration proposed to this by the British Plenipotentiaries, and which will be analyzed in a subsequent part of this Statement, the term "Atlantic Ocean" embraces the Gulf of St. Lawrence, but is distinguished from "the Gulf of Mexico and all parts of the West Indies."

The provisions finally adopted in the treaty of Ghent throw no further light on the subject, on account of the terms in which they are expressed.

A still more conclusive argument was offered in the First American Statement, which has been anticipated in that of Great Britain. It is in order to weaken its force, that, at the same time that it is suggested in the British Statement, that all bays and gulfs

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(*k*) Written Evidence, No. 9 (*a*)
(*l*) Written Evidence, No. 46.
(*m*) Written Evidence, No. 46.

must be taken as so distinct from the seas and oceans, with which they are respectively connected, as to convert the generic term "Atlantic Ocean" into a mere specific designation, embracing neither of the inlets, bays, nor gulfs connected with it; an exception is attempted to be made, with respect to what is called another class of bays. These are stated to be "merely the expansions of the mouths of rivers, of which they bear the name," and to be "regarded in no other light than as portions of the rivers themselves." Atlantic Ocean.

As the Sagadahoc Bay and the Penobscot Bay, through which the rivers Kennebec and Penobscot empty themselves into the Atlantic, are specified by their names in Mitchell's Map, it was felt that, unless such an exception could be made, the conclusion was unavoidable, that, if the Bay of Fundy and the Gulf of St. Lawrence must be considered as distinct from the Atlantic Ocean for all the purposes of the treaty, there was no river which could, under that instrument, be considered as falling into that Ocean.

But there is no foundation for the distinction. The names of "bay" and "gulf" have been indiscriminately given every where to inlets differing as much in character as in size. The appellation of gulf is equally given to that of Lyons and to that of Finland, though of an entirely different character: of two inlets of the same character, one is called Hudson's *Bay*, and the other *Gulf* of St. Lawrence: and all that portion of the River St. Lawrence which extends from the mouth of the Sagueny to Cape Rosiers, might have been distinguished by the appellation of "Bay," with as much propriety, as what is called "Bay of Delaware." The name of "Bay" has in fact been given to inlets of every size and description. In Mitchell's Map various bays are designated, (Casco Bay, Well's Bay, &c.) smaller than that of Penobscot, and which do not bear the name of any rivers emptying into them.

If there was any foundation for the broad assertion, that the term "Atlantic Ocean" does not in general embrace the Bays and Gulfs connected with that Ocean, it would rest solely on the fact, that such Gulfs and Bays are known by distinct names: and that fact is as true of the Sagadahoc and Penobscot Bays, as of the bay of Fundy or of the Gulf of St. Lawrence. If those Bays which are described in the British Statement, as the expansions of the mouths of rivers, can be regarded in no other light than as portions of the rivers themselves, those Bays also, which, like that of Fundy, are merely contractions of the Ocean, must necessarily be regarded only as portions of the Ocean itself.

Nor can the Penobscot Bay be at all considered as an expansion of the river of that name. That river discharges itself into the Bay in the same manner as the River St. Croix falls into the Bay of Passamaquoddy, which last bay is, by both Governments, held, not as an expansion of the River St. Croix, but as a part of the Bay of Fundy. (*n*) Both bays are formed by a number of islands, and they are not, as the Delaware may be considered, a continuation of the rivers which fall into them.

It cannot, at all events, be denied, that Long Island Sound, through which Connecticut River empties itself into the Atlantic Ocean, is a large inlet of the Atlantic, of as distinct and marked character as the Bay of Fundy; nor that the River Connecticut is, as much as the Penobscot and the Kennebec, one of the rivers described in the treaty as falling into the Atlantic Ocean, which are to be divided from the rivers falling into the St. Lawrence; since the boundary line extends along the dividing Highlands, as far as the North-westernmost source of that river.

The argument remains unshaken, that, (with the exception of such Bay or Gulf, as may be excepted by virtue of some other provision of the treaty,) if the rivers which fall into the Atlantic Ocean through a gulf, bay, or inlet, known by a distinct name,

(*n*) Written Evidence, No. 1. Treaty of Ghent, Art. 4.

Atlantic Ocean. are not, in the clauses of the treaty in which such rivers are mentioned, to be held as "rivers falling into the Atlantic Ocean," there is not a single river, contemplated by the treaty as such, to which the description applies.

Finally, it is only necessary to refer to the clause of the treaty of 1783, now under consideration, to be satisfied that its meaning admits of no doubt.

The words are: "The Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean."

In that sentence, not only the Atlantic Ocean is neither united with nor distinguished from the Bay of Fundy nor the Gulf of St. Lawrence, but it is expressly distinguished from the River St. Lawrence, and from that river alone. And this is the peremptory reason, why the "rivers that fall into the Atlantic Ocean" must, in that clause, be necessarily understood to embrace all the rivers which fall into any of the inlets of that ocean, with the sole exception of those which empty themselves into the River St. Lawrence, and from which they are to be divided.

§ 3.

OBJECTION DERIVED FROM THE DESIGNATION OF THE BAY OF FUNDY, AS DISTINCT FROM THE ATLANTIC OCEAN.

Bay of Fundy. In that clause of the treaty which has heretofore been considered, the rivers which fall into the Atlantic Ocean are distinguished only from those which empty themselves into the River St. Lawrence. But, in another sentence of the same article, and in reference to another part of the boundary, the Bay of Fundy is twice designated by its specific name, and once, as contradistinguished from the Atlantic Ocean. It is thence inferred, in the British Statement, that these terms, "Bay of Fundy" and "Atlantic Ocean," "being taken as distinct and separate, the one from the other, in one part, (of the treaty,) they must surely be equally so considered in every other part; for it would be contrary to all reason and consistency, to assign one meaning to a term in one clause, and a different meaning to the same term in another clause of the same instrument."

This sweeping inference, in support of which not a single argument or authority has been adduced, is altogether denied by the United States. They contend, that it would be equally contrary to reason and common usage, to assign the same meaning to a term in one clause, which it may have in another clause of the same instrument, when it appears from the general tenor of the two clauses, and the expressions used in each respectively, that the term, in one is restrained by those expressions, and has, therefore, a narrower signification; whilst, in the other, it is used in a more general sense, or is restrained in a different manner.

In one of the clauses of the treaty, the term "Atlantic Ocean" is contradistinguished from, and must, in construing that clause, be held as distinct from the Bay of Fundy. In another clause of the treaty, the same term is contradistinguished from the River St. Lawrence alone, and must, accordingly, in construing that clause, be held as distinct from that river alone, and not from the Bay of Fundy, nor from any of the other inlets, which, in its general sense and common acceptation, are part of the Atlantic Ocean.

This is perfectly consistent with the appropriate rules of language, by which every instrument must be construed. But as it is obvious that the objection, on the part of Great Britain, rests exclusively on the inference thus attempted to be drawn, we will now proceed to establish the correctness of our own construction, by unexceptionable authorities, taken from British documents immediately connected with the subject.

1. The boundaries of the Grant to Sir H. Roswell and others, by Charles I., dated the 4th day of March, 1628, and commonly called "the *Colony* Charter," as quoted

in the Charter of the *Province* of Massachusetts' Bay, were described in the following words, viz: Bay of Fundy.

"All that said part of New-England, in America, which lies and extends between a great river commonly called Monomac, alias Merimack River, and a certain other river, there called Charles River, *being in the bottom of a certain bay, there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts Bay;* and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles, on the South part of the said river called Charles River, or of any or every part thereof; and also, all and singular the lands and hereditaments whatsoever, lying and being within the *space of three English miles to the Southward of the Southernmost part of the said bay called Massachusetts*, alias Mattachusetts, alias Massatusetts Bay; and also, all those lands and hereditaments whatsoever, which lie and be within the space of three English miles to the Northward of the said river called Monomack, alias Merimack, or to the Northward of any and every part thereof, and all lands and hereditaments whatsoever, lying within the limits aforesaid, North and South in latitude and breadth, and in length and longitude, of and within all the breadth aforesaid throughout the main lands there, from the Atlantic or Western Sea and Ocean on the East part, to the South Sea on the West part." (*o*)

The Eastern front of more than one half of the Grant extended, from North to South, along that certain bay, commonly called Massachusetts' Bay. Nevertheless the depth, or length and longitude of the Grant, is described as being "of and within all the breadth aforesaid throughout the main lands there; from the *Atlantic* or Western Sea and *Océan* on the *East* part, to the *South Sea* on the *West* part."

The term "Atlantic Ocean," which had not been used in the description of the Eastern boundary along the sea coast, is afterwards used, as embracing the Bay of Massachusetts, though this had in another sentence been designated by its specific name. For if that bay was not, in the last sentence, included in that generic term, there would have been, to that part of the Grant which fronts on the bay, no Western boundary assigned: the length or longitude being described as extending to the South Sea on the West, from the *Atlantic Ocean*, without naming Massachusett's Bay on the East.

2. It has been stated, in the British Statement, that, "in the Grant of Nova Scotia, by James I. to Sir William Alexander, the Bay of Fundy and the Gulf of St. Lawrence, are specifically described, and distinguished, the form r from the adjacent parts of the Sea, and the latter, as well from the Sea as from the River St. Lawrence."

The Bay of Fundy is certainly, in that Grant, distinctly described, not indeed by that name, which it had not yet received, but as the Great Eastern Inlet, which runs between the countries of the Souriquois and Etchemins. It is mentioned with great propriety, in order to designate with precision the position of St. Mary's Bay and of the River St. Croix, both hardly then known by those names, and the situation of which is thus determined, as lying respectively on the South and North side of the entrance of the Bay of Fundy.

The Gulf of St. Lawrence is also specifically described, as the boundary of the Grant, from Gaspé to Cap-Breton. But neither the words "sea," nor "Atlantic Ocean" are used, in describing the boundary from Cap-Breton to Cape Sable: And the word "Sea" is afterwards used, as expressly embracing both the Bay and Gulf aforesaid; as will clearly appear by the following clause of the Grant, viz:

"Including and comprehending, within the aforesaid shores of the Sea and their circumferences, *from Sea to Sea*, all continents, with the rivers, torrents, bays, shores, *islands*, or *seas*, lying near or within six leagues of any part of the same, from the

(*o*) Written Evidence, No. 13.

Bay of Fundy. Western, *Northern* or *Eastern* parts of the same shores or precincts; and from the South-east, where lieth Cape Breton, and from the *Southward* part thereof, (where Cape Sable is,) *all seas* and islands towards the South within forty leagues of the said shores thereof." (*p*)

The word "Sea" is there, as well as wherever else it occurs in the Grant, used in its general sense, and embraces both the Bay of Fundy and the Gulf of St. Lawrence. The Grant of Islands and *Seas*, whether for six leagues, from the West, North and South, or for forty from the South, is expressed in the same words (*maribus*, omnia *maria*.) The seas thus granted and described, as extending from the North and East, could be no other than the River (*q*) and Gulf of St. Lawrence. The seas extending from the South are the main Atlantic Ocean. The emphatic words "from sea to sea" (*à mari ad mare*) most clearly mean and can mean nothing but, "from the main Atlantic and Bay of Fundy to the River and Gulf of St. Lawrence."

Thus we have a direct instance, where, the Bay of Fundy and the Gulf of St. Lawrence being, in one clause of the Instrument, specifically described and distinguished by their respective names, the general term "Seas" is nevertheless used and understood, in other clauses of the same Instrument, as embracing the said Bay and Gulf.

The term "Seas" is uniformly used, in the Grant, instead of that of Atlantic Ocean It will not be denied that they are, as to its object, perfectly synonymous: and we find another proof of this, as well as of the general meaning of the words used in the Grant, in a publication of the year 1624, by the Grantee himself, Sir Wm. Alexander; where, speaking of the limits of his Patent, he says, "leaving the limits to be appointed by his Majesty's pleasure, which are expressed in the patent, granted unto me under his great seal of his Kingdom of Scotland, (marching upon the West towards the river of St. Croix, nov. Tweed, where the Frenchmen did design their first habitation,) with New England; and *on all other parts, it is compassed by the Ocean*, and the Great River of Canada." (*r*)

The Grantee seems to entertain some doubts, as to the certainty of the limits between New England and his Grant; which probably arose from the manner in which the Northwardly line, from the River St. Croix to the River St. Lawrence, is described in it. But he says expressly, that, on all other parts, it is compassed by the River St. Lawrence and by the Ocean; which last term therefore clearly embraces the Bay of Fundy and the Gulf of St. Lawrence.

3. In all the Commissions of the Governors of Nova Scotia, from the year 1765, to the year 1782, (*s*) this Province is described, as being "bounded on the Westward by a line drawn from Cape Sable, across the entrance of the Bay of Fundy, to the mouth of the River St. Croix; by the said river to its source, and by a line drawn due North from thence to the *Southern boundary of our Colony of Quebec;* to the Northward by the *said boundary* as far as the Western extremity of the Bay des Chaleurs; to the Eastward by the said Bay and the Gulph of St. Lawrence, to the Cape or Promontory called Cape Breton in the Island of that name; . . . . . and to the Southward by the Atlantic Ocean, from the said Cape to Cape Sable aforesaid, includ-

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(*p*) "Includens et comprehendens intra prædictas maris oras litorales ac earum circumferentias *à mari ad mare*, omnes terras continentes cum fluminibus, torrentibus, sinubus, littoribus, *insulis, aut maribus* jacentibus propè aut infra, sex leucas ad aliquam earumdem partem, *ex Occidentali, boreali* vel *orientali* partibus orarum littoralium et præcinctuum earumdem, et ab Euronoto ubi jacet Cap-Breton, et *ex australi* parte ejusdem (ubi est Cap de Sable) *omnia maria ac insulas* versus meridiem intra quadraginta leucas dictarum orarum littoralium earumdem."

(*q*) The shores of the River St. Lawrence are, in the Grant, called *Sea Shores* "per *maris oras* littorales ejusdem fluvii de Canada."

(*r*) See Egbert Benson's Report to President—Written Evidence, No. 36.

(*s*) Written Evidence, No. 15.

ing the Island of that name, and all other Islands within forty leagues of the Coast," Bay of Fundy &c.

The Southern boundary of the Colony of Quebec, there referred to as being the Northern boundary of Nova Scotia, is, in the commissions of the Governors of that Province issued during the same period, described in the same words as in the Proclamation of 1763, or the Quebec Act of 1774; that is to say, either, as passing "along the Highlands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea, and also along the North Coast of the Bay des Chaleurs;" or, as being "a line from the Bay of Chaleurs, along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea, to a point in 45 degrees of Northern latitude, on the Eastern bank of the River Connecticut." (*t*)

In defining the boundaries of Nova Scotia, the Bay of Fundy, the Gulf of St. Lawrence, and the Atlantic Ocean are each specially designated and distinguished from each other; the appellation of Atlantic Ocean being expressly confined to the Main Ocean, exclusive of that Bay and Gulf, and to that portion of it only, which extends from Cape Breton to Cape Sable.

Now, whatever point of the line drawn due North from the source of the River St. Croix may be considered as the North-west Angle of Nova Scotia; or, in other words, whatever point on that line may be considered as the point of intersection with the Southern boundary of the Colony of Quebec, as described in the commissions of the Governors of that Colony; whether that point of intersection, or North-west angle of Nova Scotia, be Mars' Hill, or any other point north of it; it is impossible to draw any line whatever, from that point of intersection or North-west angle of Nova Scotia, to the Western extremity of the Bay des Chaleurs, which will or can divide from each other, cross, or touch any other river or rivers whatever, but such as fall, either into the River St. Lawrence, the Gulf of St. Lawrence, or the Bay of Fundy.

No river whatever falls into that portion of the Atlantic Ocean which extends from Cape Breton to Cape Sable, but such as have their sources within the Peninsula or present Province of Nova Scotia, South of the Bay of Fundy, or the Gulf of St. Lawrence, and of the Isthmus, which separates those two inlets. It is impossible that any such river should be, either divided from other waters, intersected or touched by any line, that can be drawn from any point, north of the source of the River St. Croix, to the Western end of the Bay des Chaleurs.

The rivers therefore which, according to the designation of the Southern boundary of the Colony of Quebec, or Northern boundary of Nova Scotia, are to be divided, by that boundary, from the rivers emptying into the River St. Lawrence, and are there described, as rivers falling into the sea, (a term used in the Proclamation of 1763 as synonymous with Atlantic Ocean,) must of necessity be those, and those alone, which fall either into the Bay of Fundy, or into the Gulf of St. Lawrence.

Thus, although the term "Atlantic Ocean" is, in one part of the description of the Boundary, used in a limited sense, and exclusive of the Bay of Fundy and of the Gulf of St. Lawrence; its synonymous term "Sea," in another part of the description, and in reference to the division of the rivers which are intended to be divided by the treaty, embraces and embraces nothing but that Bay and Gulf.

4. After the treaty of 1783, the Northern part of Nova Scotia was erected into a New Province, by the name of New Brunswick; and the Bay of Fundy, together with the Isthmus which separates it from the inlet of the Gulf of St. Lawrence called "Bay Verte," were made the Southern Boundary of the New Province. In the subsequent commissions of its Governors, the Southern Boundary of the Province of

(*t*) Written Evidence, No. 21.

Bay of Fundy. Quebec, (or Lower Canada,) continues to be declared the Northern Boundary of that of New Brunswick. But the words "Atlantic Ocean," for the sake, it is presumed, of conforming literally with the expressions used in the treaty of 1783, are, in reference to the division of rivers, substituted to the word "Sea," in the commissions of the Governors of Quebec or Canada, of a date subsequent to the treaty. (*u*) And, for the same reason already assigned, it is evident that the rivers there described, as falling into the Atlantic Ocean, must necessarily be such as fall either into the Bay of Fundy or the Gulf of St. Lawrence, and therefore that both are embraced by the general term "Atlantic Ocean."

5. Another instance will be found in the commission of 16th March, 1772, of the Governor of Newfoundland, as quoted in that of Guy Carleton, Governor of the Province of Quebec, dated 27th December, 1774. The Islands of Madelaine are there described as lying in the Gulf of St. Lawrence; and the Labrador River St. John, which has its mouth in that Gulf, as falling into the Sea. Thus, notwithstanding the designation of the Gulf by its specific name, in one clause of the commission, the word "Sea," is used in another clause, not only as embracing the Gulf, but instead of its specific designation. (*v*)

It is believed that after what precedes, and having examined the authorities referred to, it will no longer be asserted, that the terms "Sea" and "Atlantic Ocean," do not comprehend, and have not been used, as embracing their subordinate inlets, bays, or gulfs; particularly the Bay of Fundy, and the Gulf of St. Lawrence, and in reference to rivers described as falling into the Sea, or Atlantic Ocean.

But the principal object, was to shew, and it has also been conclusively proved, that different meanings may, without inconsistency, be given, and have in those British public acts, been assigned to the same term, in different clauses of the same instrument. And it will not escape notice, that the proofs are drawn exclusively from documents connected with the contested Boundary, that the description in the treaty of 1783 of that Boundary was borrowed from the commissions which have been quoted; and that most of the quotations refer expressly to the Bay and Gulf, which are the subject matter of this discussion.

Since, therefore, the use, in one part of the treaty, of the terms "Bay of Fundy" and "Atlantic Ocean," as distinct the one from the other, cannot, in any degree, restrain or affect the natural sense of the term "Atlantic Ocean," in another clause of the treaty, where it is used as distinct and separate from the River St. Lawrence alone; it would not seem necessary to inquire into the reason, why the Bay of Fundy was specially designated and distinguished, in the last clauses of the second article of the treaty.

Yet, if it can be shewn, that there was a natural reason, or a special motive for making that distinction in those clauses, and that such reason and motive were applicable to those clauses alone, there will not remain even a pretence for asserting, that the distinction, thus made in a part of the treaty for a particular purpose, can be construed to extend to another clause, to which the distinction and the reasons for it were wholly inapplicable.

The United States are declared by the treaty, to be bounded "South by a line to be drawn . . . . . along the middle of St. Mary's River to the Atlantic Ocean. East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source; . . . . . comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia, on the one part, and East Florida, on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean."

(*u*) Written Evidence, Nos. 37 and 38.
(*v*) Written Evidence, No. 21.

And it is urged, that the last designation of the Bay of Fundy must have been for some other purpose, than in reference to the Eastern Boundary of the United States; since, had there not been another object in view, it was unnecessary to mention that Bay; and the lines might have been described as correctly, by using the words, "due East from the points, where the aforesaid Boundaries between Nova Scotia, on the one part, and East Florida on the other, shall respectively touch the Atlantic Ocean." Bay of Fundy.

The Eastern extremity of the Southern Boundary of the United States was, in the first instance, designated to be the point where the St. Mary's River touched, or had its mouth, in the Atlantic Ocean. And the Southern extremity of their Eastern Boundary was likewise designated to be the point where the River St. Croix had its mouth in, or touched, the Bay of Fundy.

All the Islands, between lines to be drawn due East from those two points, were afterwards declared to be comprehended within the United States. In designating, therefore, in the last sentence, those two points, precision of language required, that they should be described in the same terms as in the preceding sentence, where they had been designated, as respectively touching the Bay of Fundy and the Atlantic Ocean. It would have been a most incorrect and inapposite use of language, after those points had thus been designated, to have immediately after described them as the points where the *aforesaid* Boundaries shall respectively touch the Atlantic Ocean.

The apparent distinction, therefore, made in the last sentence, between the Bay of Fundy and the Atlantic Ocean, is only in reference to those two points, and arises from the manner in which they had been respectively designated in the preceding sentence. It is solely because the River St. Croix is, in the first instance, described as having its mouth in the Bay of Fundy, that it became again necessary and proper to designate, in the last instance, the point from which the East line was to be drawn, (namely the mouth of the River St. Croix,) as touching that Bay. Why the River St. Croix was thus described, can alone require an explanation: and it will now be shewn, that there was for this a natural, and on the part of the American Negotiators, an important reason.

It has already been seen, that the River St. Croix was designated in the same manner in the original grant of Nova Scotia to Sir William Alexander, for the necessary purpose of describing, with precision, the position of a river, then hardly known in England, and on which the name of St. Croix had been imposed, if imposed at all, but a few years before by the French. The same designation was evidently borrowed from that grant, in the description of the Boundaries inserted in the commissions of the British Governors of that Province. After the negotiators of the treaty of 1783 had finally agreed to confirm the River St. Croix, as the Boundary between the dominions of the two Powers, it was natural that they should, and it would indeed have been an extraordinary course, if they had not adopted the same terms, in describing the situation of the river, which had been so long in use in the public British documents, and which had been preserved uninterruptedly to the very date of the treaty. (*w*)

This mention of the fact that the River St. Croix had its mouth in that inlet of the Atlantic Ocean known by the name of Bay of Fundy, can have no more effect on other clauses of the treaty than in Alexander's Grant, or the Governors' Commissions. And it has already been shewn, with respect to both, that notwithstanding that specific mention by name of "Bay of Fundy" and of "Gulf of St. Lawrence" in the description of the boundary, both that bay and gulf were embraced by the generic term used in another clause.

(*w*) See Written Evidence, No. 15. In the Commission to Governor Parr, dated 29th July, 1782, the words are, "bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix, by the said river to its source," &c.

Bay of Fundy.

But there was also another and peremptory reason why the American negotiators must have insisted that the River St. Croix should continue to be designated as having its mouth in the Bay of Fundy.

The repeated attempts, on the part of the crown, to encroach in that quarter on the chartered boundaries of the Province of Massachusetts' Bay, have already been mentioned. The Government of Nova Scotia, pursuing the same course, had in the year 1765 made a large grant of land to Francis Bernard, and others, *west* of the Schoodic River, (*x*) which has ultimately been decided to be the true St. Croix. That Government had, also, in the year 1767, granted to William Owing, and others, the island now known by the name of Campo Bello; (*y*) and it laid a claim to that of Grand Menan. Both those islands are situated south of a line drawn due east from the mouth of the Schoodic. That of Grand Menan, according to Mitchell's Map, lies chiefly *west* of the line designated in the Commissions of the Governors of Nova Scotia, as a line "drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix," or Schoodiac. Both have finally been adjudged to Great Britain, as being in 1783, or having theretofore been, within the *limits* of Nova Scotia. (*z*)

A conclusive proof of the general prevailing uncertainty as to what river was the true St. Croix, will be found in the topographical description of the Middle British American Colonies, published in 1776, by T. Pownall, M. P. for several years Governor of His Majesty's Province of Massachusetts' Bay, and which has been quoted with a high encomium in the British Statement. His words are:

"The River Passam-Aquâda, or Possam-Accâda, which runs into a bay so called, is the supposed eastern boundary of New England; to the east of this begins Aquâda or Nova Scotia; *an incertain River St. Croix* is the nominal boundary. But as the French, according to their mode of taking possession, always fixed a cross in every river they came to, *almost every river on this coast of Sagadahoc has* in its turn *been deemed* by them *La Riviere de St. Croix.* Under equivocation of this general appellative, they have amused our negotiators on every occasion." (*a*)

It will be recollected that by "Sagadahoc" is meant the ancient grant to the Duke of York, or that tract of land described in the Charter of Massachusetts, as lying between Nova Scotia and the (old) Province of Maine; that it is thus laid down in Mitchell's Map; and that as the "Coast of Sagadahoc" extends accordingly from the Bay of Passamaquoddy to that of Sagadahoc, (or Kennebec,) it was according to Pownall uncertain which of the rivers between those limits was the true St. Croix.

Whether the fact alleged there, with respect to the French, was correct or not, is immaterial; nothing can shew more forcibly how general was the opinion of the uncertainty arising from that cause, than to find it entertained by a late Governor of the Province of Massachusetts' Bay, one of the men of the time best acquainted with American affairs, and asserted by him thirteen years after the cession by France of all her possessions in North America, when there was no longer any motive for misrepresentation, or cause for prejudice.

In the same manner, Mr. Jay, one of the negotiators of the Treaty of 1783, in his deposition laid before the Commissioners appointed pursuant to the 5th Article of the Treaty of 1794, expresses himself as follows: "In settling the boundary line (described in the Treaty,) and of which the River St. Croix forms a part, it became a question, *which of the rivers in those parts was the true River St. Croix; it being said that several of them had that name.* They did finally agree that the River

(*x*) Written Evidence, No. 34.

(*y*) Called "Outer Passamaquoddy Island," in the Grant. Written Evidence, No. 34.

(*z*) Written Evidence, No. 2.

(*a*) Written Evidence, No. 40.

St. Croix, laid down on Mitchell's Map, was the River St. Croix which ought to form a part of said boundary line." (*b*) Bay of Fundy.

So strongly impressed was that belief, that it is found again asserted, twenty years later, in the argument addressed in 1797 by the British Agent to the said Commissioners, (who were appointed only to decide which river was the true St. Croix,) when the Agent was arguing that the Schoodic and not the Magaguadavic, (Mitchell's St. Croix,) was the river intended by the Treaty of 1783.

After adverting to an Act of Parliament of the year 1774, (15 Geo. III. ch. 10,) for restraining the trade of Massachusetts' Bay, and other colonies, in which it is enacted, "that the river which emptieth itself in Passamacadie or Passamaquody Bay, on the western side, and is commonly called and known by the name of St. Croix River, be held and deemed, for all the purposes in this act contained, to be the boundary line between the Provinces of Massachusetts' Bay and Nova Scotia;" and after asserting that the river thus designated, was that contemplated by the Treaty of 1783, and which ought accordingly to be declared the true River St. Croix, the British Agent proceeds as follows:

"If this principle were once departed from, there would be no check to contention on the subject, though it would be fortunate to His Majesty's interests if he were not thus bound; as it might be clearly shewn in that case, that the *River Penobscot, once indiscriminately with the other rivers upon this coast called the St. Croix, was the true boundary* by which Nova Scotia or Acadia was ceded to His Majesty by the Treaty of Utrecht, and ought in such case, by the principles of the Laws of Nations, to be established as the *eastern boundary of the United States.*"

And he again says, in answer to the Agent of the United States, who contended that the Magaguadavic was the true St. Croix:

"The argument of the Agent of the United States would certainly apply with much greater force in proving the *Penobscot* to be the river agreed to; as *this river, besides being once known indiscriminately with the other rivers by the name of St. Croix*, has been the reputed boundary of Nova Scotia, and was contended for as such by the British Commissaries at Paris, in the year 1750, in their memorials concerning the limits of Acadia or Nova Scotia." (*c*)

It will be readily perceived, that since the River St. Croix had, by the Treaty of 1783, been declared to be the boundary, the Penobscot could not, in the year 1797, have been claimed as such on any other ground than as being itself the true St. Croix. The British Agent asserts that it ought, and would under the Treaty, have been considered as such, had not a previous act of Parliament declared the St. Croix to be a river which emptied itself into Passamaquoddy Bay. But that act would have given no security against an attempt on the part of Great Britain to claim the Penobscot as the true St. Croix and the boundary intended by the treaty; since the River St Croix, that empties itself into the Bay of Passamaquoddy, is, by the act of Parliament, to be held and deemed the boundary between the Provinces of Massachusetts' Bay and Nova Scotia, *only for the purposes contained in the act;* and since, therefore, that temporary enactment, made for the special purpose of embracing within the provisions of the restraining act all the population west of Passamaquoddy Bay, had expired with the act itself. (*d*)

(*b*) Written Evidence, Nos. 23 and 36.

(*c*) Written Evidence, No. 35.

(*d*) The reason why the British Agent adverted to the Act of Parliament which was inapplicable, and not to the Treaty, is obvious. He was attempting to shew that the westernmost of the two rivers that empty themselves into Passamaquoddy Bay, was the true St. Croix. The Act of Parliament had made a provision to that effect; and the Treaty had only generally declared the mouth of the River St. Croix to be in the Bay of Fundy.

Bay of Fundy.

It was that provision in the treaty itself, declaring the mouth of the River St. Croix to be in the Bay of Fundy, which afforded the security required in that respect.

Under the prevailing belief, that the designation of a River St. Croix, by that name only, was not sufficient to determine which river was the true St. Croix, and with the knowledge of the anxious desire evinced by Great Britain to extend, under color of that uncertainty, the boundaries of Nova Scotia to the Penobscot, the insertion of that provision in the treaty was of paramount importance to the United States.

By declaring the mouth of the River St. Croix to be in the Bay of Fundy, the only question which might remain susceptible of doubt, was, which of the two rivers that empty themselves into Passamaquoddy Bay was entitled to the designation of River St. Croix? The Western extremity of the last mentioned bay, or at farthest of Grand Menan Island, forms also the Western extremity of the Bay of Fundy, as will be seen by Mitchell's Map, by the Map A, and by reference to what is described as the entrance of the Bay of Fundy, in Sir William Alexander's Grant. Not only was every pretence to claim the Penobscot, as the true St. Croix, removed by that provision, but no river whatever could be claimed as such, that lay West of Passamaquoddy Bay; since, as will appear by Mitchell's Map, Machias River, which is the next in that direction, lies West of the Western extremity of Grand Menan Island.

It may, perhaps, be asked why, with Mitchell's Map before them, where the mouth of the River St. Croix is laid down, as it really is, in Passamaquoddy Bay, which is there designated by its distinct name, that river was not, in the treaty, declared to have its mouth in that bay, instead of the Bay of Fundy?

Such specific designation of the Passamaquoddy Bay was unnecessary; since it would not have rendered the description more precise, with respect to the object in view. Every river West of the Island of Grand Menan was equally excluded, whether the mouth of the River St. Croix was declared to be in the Bay of Fundy, or in that of Passamaquoddy; and either designation would have left it equally doubtful, which of the two rivers was the true St. Croix. The negotiators being unacquainted with the Indian names of the rivers in that quarter, could not have used expressions more precise than those of the designation which they adopted, and which had prevailed from the date of Sir William Alexander's Grant to that of the treaty.

But this leads to another observation. With Mitchell's Map before them, and a full knowledge that the River St. Croix had its mouth in the Bay of Passamaquoddy, the negotiators of the treaty of 1783 declared it to be in the Bay of Fundy. The Commissioners appointed pursuant to the 5th article of the treaty of 1794, to decide which, according to the treaty of 1783 was the true River St. Croix, did not hesitate, notwithstanding the treaty designation of the Bay of Fundy, to declare in their decision, (*e*) that "the mouth of the said river (St. Croix) is in Passamaquoddy Bay, at a point of land," &c. That bay is clearly a part of that of Fundy, and has been acknowledged to be such in a subsequent instrument. (*f*) The designation in the treaty and the decision of the Commissioners afford an additional proof, that the general term is always understood to embrace its subordinate parts, unless such part be specially excepted.

It will not now be denied that there were urgent reasons, abundant cause, for designating in a special manner, with as much precision as could be obtained from the materials in hand, the place where the mouth of the intended River St. Croix was to be found. Notwithstanding the precautions taken in that respect, the river contemplated by the negotiators, that which in Mitchell's Map bears the name of St. Croix, has not been confirmed as the boundary between the two countries. The Schoodiac, the

(*e*) Written Evidence, No. 2.
(*f*) The Treaty of Ghent, Art. 4.

most *Westerly* river that empties into Bay Fundy, has been decided to be the true St. Croix. But from what has been stated, and indeed, judging from the arguments adduced in support of the claim now advanced by Great Britain, it may be fairly presumed, that the field of English pretensions would have been extended far beyond the Schoodiac, had it not been limited to rivers having their mouth in the Bay of Fundy. Bay of Fundy.

Can it be now pretended that this precaution, the special designation made for a particular and obvious object, necessary in order to obtain the object to which it applied, was intended and can be made to extend to another object, and to have an effect on the construction of another and distinct provision of the treaty? Can it be contended that, because it was necessary to specify in what part of the Atlantic Ocean the River St. Croix emptied itself, it follows, that when speaking, in another clause of the treaty, of that Ocean, not in reference to that part, but as contradistinguished exclusively from the River St. Lawrence, it must be so understood, as to exclude that part of it, (the Bay of Fundy,) which, for that particular, and for no other reason, it had been requisite so to specify? It is obvious, that it is only in case there had been no necessity to use the designation of "Bay of Fundy" where it is used, that there would have been any color for the pretended inference, that that designation was made for all the purposes of the treaty, or was intended to control the construction of any other of its provisions.

§ 4.

OBJECTIONS TO THE RIVER ST. JOHN, DERIVED FROM OTHER SOURCES THAN THE TERMS OF THE TREATY.

Having shewn how destitute of any foundation is the inference attempted to be drawn from certain expressions in the treaty, we will now proceed to examine the reasons derived from other sources, which have been alleged, in order to sustain the assertion, that the River St. John, which falls into the Bay of Fundy, was not intended, by the framers of the treaty, to be included in the class of rivers therein described as falling into the Atlantic Ocean. Negotiations of 1782.

It has already been stated (*g*) that Congress, in their first instructions, of August 14th 1779, had declared the United States to be bounded:

"North, by a line to be drawn from the North-west angle of Nova Scotia, along the Highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the North-westernmost head of Connecticut River; . . . . . and East by a line to be drawn along the middle of St. John's River, from its source to its mouth in the Bay of Fundy. (*h*) . . . . . If the Eastern boundary above described cannot be obtained, you are hereby empowered to agree that the same shall be afterwards adjusted by Commissioners, to be duly appointed for that purpose, according to such line as shall be by them settled and agreed on, as the boundary between that part of the State of Massachusetts' Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeably to their respective rights."

Although those instructions had been declared, by those of 15th June, 1781, to be no longer peremptory, (*i*) the boundaries were defined, in the above mentioned terms, in the first propositions of the Commissioners of the United States, which were provi-

(*g*) Written Evidence, No. 8, page 251.

(*h*) The mouth of the River St. John is there described to be in the Bay of Fundy, for the sake of precision; there being several of that name, amongst others, one which has already been mentioned, and forms one of the boundaries of the Province of Quebec, according to the Proclamation of 1763.

(*i*) Written Evidence, No. 8, page 252.

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sionally agreed to, on the 8th of October, 1782, by the British Commissioner, substituting however to the description of the Eastern boundary, the other alternative suggested by Congress, namely, that the true line between Nova Scotia and the United States should be settled by Commissioners, as soon as conveniently might be after the war.

After some discussions, during which the British contended that Nova Scotia should extend to the river Kennebec or to the Penobscot, and one of the American Ministers, after again proposing the River St. John, agreed with his colleagues to adhere to the Charter of Massachusetts' Bay, the boundary, as it is described in the treaty, was ultimately agreed to, instead of leaving it to be thereafter settled by Commissioners.

The following particulars are declared, in the British Statement, to be collected from those various instructions, propositions and transactions:

1st. That the mouth of the St. John River was, from the first, specifically described as being in the Bay of Fundy, while the Bay of Fundy was described as distinct from the Atlantic Ocean.

2dly. That the north-west angle of Nova Scotia was deliberately placed by the Americans themselves at the source of the River St. John; which source and north-west angle were by them taken as identical.

3dly. That the highlands intended to divide the rivers falling into the Atlantic Ocean from those falling into the St. Lawrence, are (in the American projet) described in the very same terms which they now retain in the definite treaty of 1783.

Whence it is inferred, "that the highlands designated in the projet, being then intended to divide the Androscoggin, Kennebec, and Penobscot Rivers alone, from those falling into the St. Lawrence, to the exclusion of the St. John, the highlands so described are still intended to divide the same rivers; and that from those rivers, therefore, the St. John is still intended to be excepted."

The highlands contemplated by the first American projet were of the same character, but differed in extent, from those designated by the treaty of 1783. And the facts quoted in the British Statement prove the very reverse of the inference attempted to be drawn from them.

The highlands contemplated in the projet and those described by the treaty had one common character, that of dividing the rivers which empty themselves into the River St. Lawrence from those that fall into the Atlantic Ocean. That property, being common to both, is in both instruments expressed in the same terms. But as they differed greatly in extent, the north-west angle of Nova Scotia, as determined by the treaty, being, according to either the British or the American claim, at least eighty miles east of that contemplated by the projet, the terms are no longer the same, in that respect, in the two instruments. The place of beginning, or north-west angle of Nova Scotia, is distinctly stated, in the projet, to be at the source of the River St. John, and in the treaty, to be at the intersection of the highlands with the line drawn due north from the source of the River St. Croix. Supposing therefore that the highlands described in the projet divided the St. Lawrence from the Atlantic rivers, to the exclusion of the St. John; and since that portion of the highlands, which extends from the above mentioned source of the River St. John to the termination of the aforesaid due north line, divides through nearly the whole of that extent the tributary streams of the St. John from those of the St. Lawrence; (*k*) it cannot be seriously asserted that the highlands of the treaty are, in that respect, either described in the very same terms, or are the same, and are intended to divide the same rivers as those contemplated in the projet.

But the terms of the projet, on which the British rely, actually prove that the River St. John, instead of being excluded, was there included amongst the rivers falling in-

(*k*) Or according to the British, from those of the Penobscot.

to the Atlantic Ocean, to be divided by the highlands from those that fall into the River St. Lawrence.

According to the projet, the United States were to be bounded North "by a line to be drawn *from* the North-west angle of Nova Scotia *along* the highlands which divide those rivers," &c. and East "by a line to be drawn *along* the middle of St. John River *from* its source *to* its mouth in the Bay of Fundy."

It has been justly observed, in the British Statement, that as "there is no mention made of any connecting line *between* the point of commencement of the Northern and that of the Eastern line; therefore they" (that is to say the North-west angle of Nova Scotia and the source of the St. John River) "must be taken as identical." And for the very same reason, because there is no mention made of any connecting line *between* the North-west angle of Nova Scotia and the dividing highlands, but on the contrary the northern boundary is "a line to be drawn, *from* the North-west angle of Nova Scotia," without any chasm or interruption whatever, "*along* the highlands which divide those rivers, &c. to the North-westernmost head of Connecticut River;" the North-west angle of Nova Scotia is, by the projet, placed on the very highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

It is evident, that neither that particular spot of the highlands designated as the North-west angle of Nova Scotia, and from which issues the contemplated source of the River St. John, nor the portion of the said highlands which gives rise to more southern sources of that river, can divide, from the St. Lawrence rivers, any river whatever which falls into the Atlantic Ocean, except the St. John itself. That river is therefore necessarily included amongst those falling into the Atlantic, which are described in the projet, as divided by the highlands from the tributary streams of the River St. Lawrence.

And since the mouth of the St. John River was, in the projet, as correctly stated in the British Statement, specifically described as being in the Bay of Fundy, and the Bay of Fundy as distinct from the Atlantic Ocean, the descriptive terms used in the projet afford an additional and conclusive proof, that the designation in one clause of the article, of the Bay of Fundy by its specific name, for a particular purpose, and its being, in consequence of that designation, afterwards described as distinct from the Atlantic Ocean, does not affect, or restrain, the natural meaning of the terms "rivers that fall into the Atlantic Ocean," so as to exclude therefrom the River St. John, although it was, in reference to the mouth of that very river, that the Bay of Fundy was thus designated and distinguished by its special name.

To this no other reply can be made than that assertion, to which Great Britain is perpetually compelled to resort, namely: that it is not necessary that the highlands, expressly described as dividing certain rivers from each other, should actually divide the rivers intended to be divided. In this instance however, the United States must be allowed to have, in their own projet, ascribed their true signification to the words they used, and not to have intended, by "highlands which divide," highlands which *do not* divide the rivers therein mentioned.

It is further insisted, that, as the original claim on the part of the United States did not extend beyond the River St. John; and as a new and more contracted line was ultimately agreed on and substituted for that first proposed line, which had been rejected by Great Britain; it is impossible to suppose that that new line should have left to the United States a territory north of the River St. John, not included in their first claim.

The American claim to the River St. John was avowedly founded on the erroneous belief, that the Chartered Boundaries of Massachusetts' Bay extended eastwardly to that river. This appears on the face both of the instructions and of the projet. No

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other reason has been assigned for that belief, but that which is stated in the Report made on the 16th August, 1782, by a Committee of Congress, in the following words:

"As to the territory of Sagadahock, which is synonymous with the lands between the Province of Maine and Nova Scotia, conveyed by the new Charter, we can only observe upon the expression already cited from the Grant thereof to the Duke of York, that the 'place called St. Croix adjoining to New Scotland, must mean the territory which went by that name. Had the river only been designed, it alone would have been mentioned. It seems to have been the practice of those times to denominate a country from a river which bounded it. The River Sagadahock accordingly, at first, gave its own appellation to the whole country as far as the river St. Croix, and afterwards to the country from thence to St. Johns, which had before been called St. Croix. The place, therefore, called St. Croix, adjoining to New Scotland, was most likely intended to describe the lands between the rivers St. Croix and St. Johns." (*l*)

The reason there assigned is altogether insufficient. The tract of land lying between Nova Scotia and the old Province of Maine, which by its Charter is made part of the Province of Massachusetts' Bay, is undoubtedly the same, commonly called "Sagadahock," which had been granted to the Duke of York in the year 1667. But although there might be a want of precision in the description of the Eastern boundary of his Grant, there was none, so far as related to the River St. Croix, in the boundary as described in the Massachusetts' Charter. The words are "the province of Main, the territory called Aceada, or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said Province of Main." And Nova Scotia was, by the grant to Sir Wm. Alexander, bounded expressly on the West by the River St. Croix.

Of this insufficiency the Committee was aware, since they acknowledge that the country in question "cannot be proved to extend to the River St. John as clearly as to that of St. Croix." (*m*) There is indeed much confusion, in all the portion of the report relating to this boundary, which evidently arises from the difficulty, to find some reasons to justify the claim to the River St. John, which, without a sufficient investigation of the subject, had been asserted in the Instructions of August 1779. (*n*) And the American negotiators of the treaty, after a full examination and discussion, did abandon the claim, on the express and avowed ground that it could not be sustained by the Charter of Massachusetts' Bay.

Another line, (namely, the River St. Croix and a line drawn due North from its source,) which intersects the River St. John, was substituted in lieu of it. The effect of this was, to leave to Great Britain a portion of territory along the sea shore, West and South of the River St. John, which was included, and to leave within the United States an inland portion of territory beyond the River St. John, which was not included within the original American claim. It cannot, without ascribing a glaring absurdity to the American negotiators, be supposed, that, in agreeing to a substitution founded in their opinion in justice, they intended to abandon, not only the territory which was shewn to be without, but also that which they found to be clearly comprehended within, the boundaries of the Massachusetts' Charter.

The fact, therefore, principally relied on in the British Statement, is, that the River St. John having been decidedly rejected by Great Britain as a Boundary, the line substituted must necessarily have been more contracted than that which had thus been rejected. And it is accordingly asserted, that the territory beyond the St. John, not

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(*l*) Secret Journals, III vol. page 174. Written Evidence, No. 8, page 254.

(*m*) Secret Journals, Vol. III, page 171. Written Evidence, No. 8, page 253.

(*n*) This report is erroneously said, in the British Statement, page 17, to have been concurred in by Congress. The report was only committed, (Secret Journals, Vol. III, page 203) instead of being referred, (as proposed by the Committee,) to the Secretary for Foreign Affairs, and does not appear to have ever afterwards been acted upon.

included within the original American pretensions, and which the United States now claim under the treaty, contains 700 square miles more than that portion of territory West of the River St. John, originally claimed by them, and which, by the treaty, has fallen within the dominions of Great Britain.

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In framing this argument, and in the assertion itself, every consideration belonging to the subject seems to have been forgotten or neglected.

A yellow line has been delineated, on the British transcript of the Map A, along the River St. John, from its mouth, to its most Southerly source in about 46° 3′ North latitude, and 69° 50′ West longitude, from Greenwich. This line is stated in the margin to be "the most favorable which Congress thought could be obtained in 1782." That most Southerly source is that which is considered by Great Britain as having been contemplated as the North-west Angle of Nova Scotia in the original American projet: and the comparative calculation of the two territories, on which her argument is founded, has accordingly been made, beginning at that source, and thence following the course of that branch and of the main River St. John.

It is impossible, in the first place, that this Southern source, if known in 1782, should have been that which the United States had in view. The source contemplated in their projet was on the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean. And the Southern source above described, lies twenty miles East of any part of those highlands, and issues from the highlands which divide the Penobscot from the St. John.

But that Southern, and apparently longest branch of the St. John, was not known in the year 1782. Its discovery is due to the explorations made in the years 1818, 1820, under the late Commission. The framers of the Treaty had not the benefit of the surveys and maps annexed to the proceedings of the Commissioners, from which the comparative contents of the two territories in question have been calculated in the manner mentioned in the British Statement: and they could have had no other data for such calculation than the maps existing at that time.

Supposing Mitchell's Map to have been that on which they relied, the most South-westerly source of the River St. John, which takes its rise in the dividing highlands, and that which gives the result most favorable to the British mode of calculating, is made, in that map, to terminate in a small lake, the western extremity of which is in about 69° 18′ W. longitude, 46° 38′ N. latitude, and about 34 miles South-east from Quebec. (*o*)

It will be easily verified, making the calculation according to Mitchell's Map, and taking that South-westerly source to have been the North-west angle of Nova Scotia contemplated in the first instructions of Congress, that the territory North of the St. John, not included within the original American claim, instead of containing 700 square miles more, is considerably less in extent than that portion lying west of the river, which was claimed by the United States, according to those first instructions, which by the treaty has fallen within the dominions of Great Britain. The British argument, being solely grounded on the contrary supposition, is therefore destitute of any foundation.

Yet this calculation is the most favorable to the British argument that could have been selected. It was utterly impossible that either the most Southern, and then unknown, source of the River St. John, or even Mitchell's Westernmost source of that river, could have been that which was contemplated in the American projet, as the North-west angle of Nova Scotia. It was there proposed that the River St. John,

(*o*) This must have been the branch designated in Map A, as the west branch of the St. John, as they nearly agree both in latitude and in the distance and bearing from Quebec. The difference of nearly one degree in longitude arises from an error, which pervades the whole of Mitchell's Map.

Negotiations of 1782. from its source to its mouth, should be the boundary between the United States and Nova Scotia, leaving within the United States all the territory on the right bank, and giving to Nova Scotia the whole country on the left bank of the river, from its source to its mouth. It will appear at once, from an inspection of the Map A, and of Mitchell's Map, that, from either of those sources to the place where the due North line intersects the St. John, the whole country on the South-east side of the river would have thus been within the boundaries of the United States, and that on the North-west side within those of Nova Scotia. Whatever breadth might be allotted to that Province in that quarter, it is evident that its North-west angle must have been at some place bearing North-west from the said point of intersection, and far North, therefore, of either of those sources; the Westernmost being, on that supposition, the Western, and the Southernmost, nearly the South-west, instead of the North-west angle of Nova-Scotia.

In placing the North-west angle of Nova Scotia at the source of the River St. John, the source which must necessarily have presented itself to the Americans, and have been contemplated in their projet, was that of the Madawaska or Temiscouata Lake, (*p*) both on account of its position, and as the only North-west branch known at that time; it having always, in a country uninhabited and without roads, been, as it continues to be, the ordinary communication between the country bordering on the River St. Lawrence and that towards the mouth of the River St. John.

The projet originated in Congress. It is not at all in proof that, in designating the first claimed boundary, that body was guided by Mitchell's Map; and it is in proof, that they had before them Bowen's Map, which is quoted by the Committee as one entitled to credit. (*q*) It will be perceived, by a reference to that Map, how much smaller must have appeared the territory beyond the St. John, not included within the original claim, than that lying on the West side of the river, which was abandoned by making the River St. Croix the Boundary.

The inference drawn in the British Statement will appear still more extraordinary, if the comparative *value*, at the date of the treaty, of the two tracts of country in question, is taken into consideration. Even now, when, after the lapse of more than forty years, the inland country has, with the great increase of population and approximation of settlements, acquired a proportionate value and importance; its soil would, acre for acre, be considered as far less valuable than that of a territory, the greater part of which borders on the sea coast and tide water. But, in the year 1782, when the attention of both Powers had been and was so entirely turned to the country on the sea shore, along which alone there were any settlements at the time, it is quite preposterous to suppose that, believing the two tracts to be nearly equal in extent, their value could have been, in the opinion of either party, even a subject of comparison.

Fief of Madawaska. In the total absence of solid reasons, resort has also been had, in the British Statement, to an ancient French Grant, situated on the Madawaska River, and including the Lake Temiscouata, which, by virtue of subsequent sales, happens to be now claimed and occupied by a British subject.

This concession, known by the name of "Fief of Madawaska," was made on the 25th November, 1683, by the French Governor and Intendant of *La Nouvelle France* and *Acadie*, to Antoine Aubert, a French subject, and his wife.

(*p*) This is one of those laid down in Mitchell's Map as having its head opposite to the Wolves' River of the River St. Lawrence.

(*q*) Printed Map, No. 12. See Secret Journals of Congress, Vol. III, page 190. Written Evidence, No. 8, page 255.

After various mutations of property between French subjects, the Fief was, subsequent to the conquest of Canada by Great Britain, sold, on the 20th July, 1763, together with the *Seigneurie* of the River du Loup, situated on the River St. Lawrence, by the then French claimants, to General James Murray, the British Governor of Quebec. Both the Fief and the Seigneurie were, after an intermediate sale to H. Caldwell, finally sold, on the 2d of August, 1802, to Alexander Fraser, the present claimant. Fief of Madawaska.

It is asked, since there "exists an extensive possession, *incontestably Canadian*, held by virtue of the rights *derived to Great Britain* from the cession to her of Canada by France, far within the line of Boundary claimed by the United States, as having formed part of the Province of Massachusetts' Bay; . . . . . on what possible ground can the United States, who, in preferring their claim in 1782, to territory in this quarter, professed to adhere to the Charter of Massachusetts' Bay, now lay claim to a territory which was granted to a French subject, by a French Governor of Canada, before the existence of the Charter of Massachusetts' Bay, and which has always formed an integral portion of Canada, whether held by France or Great Britain?"

It is sufficiently clear, that this possession is held as private property by A. Fraser, and that *his right* is derived from sales made by private individuals, and not at all from the cession of Canada to Great Britain. It is not perceived how the Fief, having, as mentioned in another part of the British Statement, "preserved its individuality under the original grant," that is to say, having been sold entire, and not in separate parcels, can possibly affect any national question. And it is altogether denied, that a grant to a French subject, by a French Governor of Canada, either before or after the existence of the Charter of the Massachusetts' Bay, can affect the limits or *sovereign* rights of the United States, so far as they may be founded on that Charter. The private rights of soil, from whatever source derived, are independent of the questions of boundaries and sovereignty, and, if doubtful, must be left to the decision of the proper tribunals.

It is quite notorious, and not at all disputed, that France did, to the very time of the conquest of Canada by Great Britain, claim the whole country which is watered by the River St. John, and its tributary streams, as a part of New France. There may be, for aught that is known to the contrary, hundreds of other French Grants on that river, and elsewhere, South of the southern boundary of the *British* Province of Canada, either in the contested territory, or within the acknowledged boundaries of the United States, or of the Province of New Brunswick.

The fact is acknowledged in the British Statement, (page 27,) which refers to the Report of a Committee of the Executive Council of the Province of Quebec, dated in the year 1787, where it is stated, that such Boundary, viz: "the height of land which divides the rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean," would curtail the *ancient* limits of this Government, and interfere with the "*seigneuries* under Canadian grants, as far back as the years 1623 and 1683." (r) It will also be given in proof, that one of those grants is divided by the acknowledged southern boundary of the British province of Canada.

How far these French Grants generally may have been respected, is best known to Great Britain. But the last French possessor having had the sagacity to dispose of his Madawaska Fief, in favor of the first British Governor of Canada, is probably the cause, why this solitary grant has escaped the general wreck of French concessions in that quarter.

(r) Written Evidence, No. 59, and British Evidence, No. 32. The Madawaska Fief was granted in 1683; but the Committee alludes to other grants as early as the year 1623.

Fief of Madawaska.

It is equally notorious, and not to be denied, that not the slightest respect was paid by Great Britain to the claim of France, over that country. The principles adopted in that respect are clearly expressed in the Letters Patent of James I., dated 3d November, 1620, to the Council at Plymouth, (commonly known by the name of the New England Patent,) and in the Charter of the *Colony* of Massachusetts' Bay, granted on the 4th March, 1628, by Charles I. (s)

The Grant in the New England Patent, is for "all that part of America, lying and being in breadth from forty degrees of northerly latitude, from the equinoctial line to the forty-eighth degree of the said northerly latitude, inclusively, and in length of and within all the breadth aforesaid, throughout all the main lands from sea to sea."

And the exception, as to the claims of other nations, is as follows, viz: "Provided always, that the said lands, islands, or any the premises by the said Letters Patent intended or meant to be granted, *were not then actually possessed or inhabited by any other Christian Prince or State.*"

The same exception, and in reference to the same year, was inserted in the Charter of the Colony of Massachusetts, dated 1628, in the following words, viz:

"Provided always, that if the said lands . . . . . intended and meant to be granted, were, *at the time of granting of the said former letters patent, dated the third day of November, in the 18th year of the reign of his late Majesty King James I., actually possessed or inhabited by any other Christian Prince or State* . . . . . that then the said grant of our said royal grandfather should not extend to any such parts or parcels thereof so formerly inhabited."

The boundaries of the grants to Sir William Alexander, in 1621, and to the Duke of York, in 1667, and of the Charter of Massachusetts' Bay, in 1691, extend to the Gulf and River St. Lawrence, and to the main sea northward and eastward. In Mitchell's Map, published in 1755, with the countenance of the Board of Trade, Nova Scotia and New England are both distinctly designated, and made to extend to the River St. Lawrence. Under the last designation are included the Old Province of Maine, according to its ancient boundaries, and the Province of Sagadahock, (Duke of York's Grant,) lying between Nova Scotia and Maine, and bounded on the North by the said River St. Lawrence.

It is therefore evident, that at no time were any territories excepted by Great Britain from the grants issued under her authority, but such as had been actually occupied and inhabited by some other European Power, prior to the year 1620, or such as might be recognised by treaty stipulations to belong to another nation; and that the chartered boundaries of Massachusetts' Bay, at the time of the cession of Canada to Great Britain, extended, without any reservation, to the banks of the River St. Lawrence.

The soundness of those principles, and the justice of the British claim to that extent, though they would be contested in a discussion where France was a party, cannot be called in question between the United States and Great Britain.

Admitting the claim of France to that part of the country to have been founded in justice, and the Fief of Madawaska to have been a possession unquestionably Canadian, from the date of the Grant to the final cession of Canada to Great Britain, the question whether that concession, and the presumed right of France to the territory on the River St. John, affected the chartered boundaries of Massachusetts' Bay, is altogether irrelevant to the point at issue between the two Powers.

After the cession of Canada by France, Great Britain had the undoubted right, in erecting new Governments out of that Province, to alter its boundaries, and to annex to her ancient colonies such parts as she might think proper, of the former acknowledged dominions of France. That this did actually take place, is proved by the order

(s) Both quoted in the Charter of the *Province* of Massachusetts' Bay, of the year 1691. Written Evidence, No. 13.

in Council, of August, 1768, in which, after having confirmed the line of division along the 45th degree of North latitude, between the Provinces of New York and Quebec, it is provided "that nothing herein before contained shall extend to affect the properties of His Majesty's new subjects, having possession under proper titles, on those parts of the lands on the South side of this line *the dominion of which was not disputed* on the part of the Crown of Great Britain;" and provision is also made in favor of those new subjects who had obtained concessions and made actual settlements on lands disputed by the Crown. (*ss*)

Fief of Madawaska.

It is therefore demonstrated, that the fact of a grant of land of Canadian origin being found in any place whatever, (South of the 45th degree of North latitude, or on the River St. John,) does not prove that it ever lay, or lies, within the boundaries of the Province of Quebec, (now Lower Canada,) as prescribed by Great Britain after the cession of Canada by France.

The British argument, then, rests exclusively on the assertion, that this grant of land has, ever since the Proclamation of 1763, constantly been subject to the jurisdiction, and been uninterruptedly held, of the *British* government of Lower Canada or Quebec.

The fief of Madawaska was held of the French government by a feudal tenure; and it appears, accordingly, that whilst France held possession of Canada, and as late as the year 1756, the various acts pertaining to that tenure, such as acts of fealty and homage, statement of the contents and description of the land, (*Aveu et Dénombrement*) and payment of the fine of alienation on mutation of property, were duly performed by the French Grantees, who resided in Canada on the waters of the River St. Lawrence. (*t*)

Not a single act of that nature, without excepting the payment of the reserved fine on each alienation of the property, appears to have been performed in relation to the government of Canada, by any of the British purchasers of the grant, from the cession of that Province to Great Britain, to the present time.

Mr. Bouchette states expressly, that "By the ancient custom of Canada, lands were held immediately from the King, en fief, or en roture, on condition of rendering fealty and homage on accession to the seignorial property; and in the event of a transfer thereof, by sale or otherwise, except in hereditary succession, it was subject to the payment of a quint, or the fifth part of the whole purchase money, and which, if paid by the purchaser immediately, entitled him to the rabat, or a reduction of two-thirds of the quint. *This custom still prevails.*" (*u*) And he also mentions the fact, that the *Dames Religieuses* of the General Hospital of Quebec did perform fealty and homage *in the year* 1791, for a fief situated *on the River St. Lawrence*, within the boundaries of the British Province of Canada. (*v*)

As the tenure remains unchanged, the omission of performing the duties attached to it affords a conclusive proof, that the fief has not, since the cession to Great Britain, been considered as being held from Canada. It is not included in the list of the fiefs conceded by the French Government, and still considered as being within the boundaries of the British Province, which is annexed to the Surveyor General's Topographical Description. (*w*) Nor has any evidence been adduced of a single act of jurisdiction, by the Government of the Province of Quebec, (or Lower Canada,) over that fief, or having any reference to it. No other evidence has been produced, of a date subsequent to the year 1762, in any way relating to that concession, than the various leases and deeds of sale of the property.

Those mutations of property between British subjects afford in themselves no evidence whatever of jurisdiction. The only semblance of proof arises from those in-

(*ss*) Written Evidence, No. 26. Appendix, page 213.
(*t*) Written Evidence, No. 58, and British Evidence, Nos. 15 to 19.
(*u*) Bouchette, page 11. Written Evidence, No. 43.
(*v*) Bouchette, page 396, and Appendix, page 12. Written Evidence, No. 43
(*w*) Bouchette, Appendix. Written Evidence, No. 43.

Fief of Madawaska

struments having been recorded in the Province of Quebec or Canada; viz: four leases, dated respectively in the years 1768, —74, —82, —86, in what is called the Register's Office of Quebec, and the deeds of sale, bearing date, July 1763 (prior to the King's Proclamation of October, 1763,) and June and August, 1802, (subsequent to the treaty of 1783,) in the offices of public notaries of the same city.

It was quite natural, that the lessees and grantees, all of them inhabitants of Canada, should, in order to preserve the evidence of their title deeds, have had them recorded by those inferior officers, neither of whom was competent judge of what were the limits of the Province. But there was a sufficient reason why those several instruments should have been thus recorded. Every one, whether lease or deed of sale, included not only the fief of Madawaska, but also, other much more valuable lands, situate within the acknowledged boundaries of the British Province of Quebec.

The deed of July, 1763, from the last French owner to General Murray, includes, 1st, the fief of Madawaska, on the river of the same name, situate near the River St. John, together with the Lake Temiscouata *adjacent thereto*, (*y joignant*,) containing three leagues in front, on each side of the river of the same name, by two leagues in depth, not being able to declare positively the extent of the Lake Temiscouata: 2dly, the seigneurie of the River du Loup, situate on the South side of the River St. Lawrence, containing seven leagues and half, or thereabout, in front, on an average depth of more than two leagues. (*x*)

The deed of August, 1802, from H. Caldwell to A. Fraser, the present claimant, as well as the three leases to Malcolm Fraser, are for the same property, and six thousand acres in addition, situate on the waters of the River St. Lawrence, behind the seigneurie of River du Loup, which had been granted in 1766 to Richard Murray by the British government of Quebec. The whole is sold to Fraser for £1766 sterling.

The lease of 1774, and the deed of sale from the executors of General Murray to H. Caldwell, dated June 1802, embrace, in addition to the above mentioned properties, the seigneurie of Lauzon on River Chaudiere, that of Foucault on Lake Champlain, the fief of St. Foi at Sillery, the mansion-house and lands of St. Bruit, a house in the city of Quebec, &c.; the whole being sold for £10,000 sterling. (*y*)

It is also stated, in the document No. 21, British Evidence, that the deposition of George Allsopp, (dated 7th September, 1804,) the Register by whom was recorded the lease of the year 1774, from General Murray to H. Caldwell, is "taken at the request of Henry Caldwell, Esq., to be used in the causes to be heard and tried before the honorable the Circuit Court of the United States next to be holden at Rutland, within and for the District of Vermont, on the 3d day of October next ensuing, in which causes Henry Caldwell, Esq. is Plaintiff." And we find the explanation of this apparent anomaly in Bouchette's Topographical Description, (*z*) where, speaking of the seigneurie of Foucault, he informs us that "The line of boundary between Lower Canada and the United States (the 45th parallel of North latitude) runs through this seigniory, whereby great part of it is placed within the State of Vermont."

Thus we have it in proof, 1st, that in prescribing the Southern boundary of the British Province of Quebec, (now Lower Canada,) no regard was paid to the situation of the ancient French grants, and whether they fell on one side or the other of the line—2dly, that French concessions, known to be *without* the acknowledged boundaries of that province, were nevertheless admitted to be recorded by the officers holding their offices at Quebec.

(*x*) Written Evidence, No. 58, and British Evidence, No. 20. For the extent of the fief of Madawaska, see Note (A) at the end of this Statement.

(*y*) Written Evidence, No. 58, and British Evidence, 21 to 25.

(*z*) Bouchette, page 188. Written Evidence, No. 43.

Even had this not been the case, it would have been preposterous to say, that acts of an inferior officer of the city of Quebec could have been known to the framers of the treaty of 1783, have had any influence on their proceedings, or can in any degree affect the boundary established, either by the public acts of Great Britain, or by the treaty of 1783. Fief of Madawaska

Yet, it is on the fact alone of the leases and deeds of sale having been recorded at Quebec, in the manner and under the circumstances which have now been explained; on no other evidence whatever, and in the face of contradictory evidence; that the structure has been erected, in the British Statement, of an extensive Possession, incontestably Canadian, held by virtue of rights derived to Great Britain, far within the pretended boundary of the Province of Massachusetts' Bay, which has always formed an integral portion of Canada, and which, preserving its individuality under the original grant, has constantly been subject to the jurisdiction of Canada.

Without pretending to understand precisely the meaning of some of the concluding remarks of the Statement, on that branch of the subject, it may be observed, that after having assumed that the Fief of Madawaska was within the Boundaries of the British Province of Canada, it is inferred, that "assuming this to be the case, it is manifest that the American line must, at the point towards the source of the Madawaska, experience an absolute chasm; a complete interception, by the interposition of Canada."

"But how (it is added) would such a line fulfil the conditions of the treaty? It would certainly, in that case, neither run along highlands, *nor would it divide rivers falling into the St. Lawrence from rivers falling into the Atlantic;* since the upper part of the Madawaska would undoubtedly be on the same line with all the rivers which fall into the St. Lawrence."

No better reason can certainly be assigned, than this last quotation, to shew that the Fief of Madawaska cannot, in conformity either with the treaty of 1783, or the proclamation of 1763, be within the Boundaries of Canada.

If those remarks were intended, (though still excluding the River St. John,) as the view taken by the British Government, of the conditions which necessarily attach to the Boundary line, in order to fulfil the conditions of the treaty; it is tantamount to an abandonment of the case, since the line claimed by Great Britain does not certainly, through the greater part of its extent, divide the rivers falling into the River St. Lawrence from any other rivers whatever.

If intended only, as that view of the subject which is taken by the United States, its correctness cannot be impeached on any other ground, than that to which Great Britain is always compelled ultimately to resort; namely, *denying* that it is necessary, in order to fulfil the conditions of the treaty, *that the line should*, from the North-west angle of Nova Scotia to the head of the Connecticut River, *divide rivers falling into the St. Lawrence from Rivers falling into the Atlantic.*

The other alleged acts of jurisdiction by the Government of Canada, over the contested territory, are, with a single exception, of a date posterior to the treaty of 1783, and will be examined in the section of this Statement, where a general view will be taken of the acts of both parties, in relation to that territory, since the year 1783.

The only act of a prior date, which has been adduced in evidence, consists of a notice from the Secretary's Office, dated 19th January, 1765, and inserted in the Quebec Gazette of the 24th of the same month. Indian Grounds.

This was founded on the petition of an Indian tribe, called *Maricittes*, complaining that the inhabitants of Canada hunted beaver, on lands belonging to them, which extended from the Great Falls of the River St. John to Temiscouata, a space of about twenty leagues, including the River du Loup, (*a*) and that of Madawaska, which emp-

(*a*) This is a distinct river from that of the same name which falls into the River St. Lawrence.

Indian Grounds. ty themselves into the River St. John; where the French had at all times been forbidden to hunt beaver, that privilege (*cette chasse*) having always been reserved to the said Indians. And the notice is accordingly given that the privilege prayed for by the said Indians, (to wit: the renewal of the order forbidding the inhabitants of Canada to hunt on their grounds,) would be allowed and confirmed to them, unless just cause could be shewn to the contrary. (*b*)

When the question was to quiet Indians in the vicinity of his Province, a British Governor might have been justified in not strictly attending to Boundaries running across a country yet in their possession. But, in this instance, the Governor of Quebec did not overstep the limits of his legitimate authority. The order, if it ever was issued, applied only to the white inhabitants of Canada, residing within the acknowledged Boundaries of his Province; and he had a right to forbid *their* hunting on Indian grounds, though situate beyond those Boundaries.

To argue from such an order, that the River St. John was within the limits of Canada, would be just as rational, as to insist that China is part of the dominions of Great Britain, because she forbids her subjects generally to trade to that country.

It may be further observed, that the protection of the Indians was one of the special objects of the Proclamation of 1763. Amongst other provisions to that effect, it is "provided, that every person who may incline to trade with the said Indians, do take out a license for carrying on such trade, from the Governor or Commander in Chief of any of our colonies respectively, *where such person shall reside.*" Whence it clearly appears that the powers given to the Governors, in relation to Indian affairs, were to be exercised, with respect to white inhabitants, in reference to *their* place of residence, and not to that of the Indians.

§ 5.

Objections relative to the Gulf of St. Lawrence.

Gulf of St. Lawrence. The arguments by which it has been shewn, that the framers of the treaty of 1783, had no intention to assign to each Power the whole of the rivers which have their mouth within their dominions respectively; and that the term "rivers which fall into the Atlantic Ocean," considered alone, embraces those which fall into the inlets of that Ocean, apply with equal force, to the Gulf of St. Lawrence and to the Bay of Fundy.

The facts, that the River Ristigouche empties itself into the Gulf of St. Lawrence through the Bay des Chaleurs, and that its mouth lies far East of the meridian of the source of the River St. Croix, are evidently irrelevant to any question at issue.

The mention, in another article of the treaty, of the Gulf of St. Lawrence by its specific name, affords another proof, that that inlet is always held to be a part of the Atlantic Ocean.

The provision alluded to is in the following words: "that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind, on the Grand Bank, and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the Sea, where the inhabitants of both countries used at any time heretofore to fish."

The Gulf of St. Lawrence is, in that clause, assimilated to the Banks of Newfoundland; both being declared to be places in the Sea; and what Sea was meant cannot be doubted, unless it should be denied that the Banks of Newfoundland are in the Atlantic Ocean.

(*b*) Written Evidence, No. 59, and British Evidence, No. 28.

Numerous instances have already been adduced in this Statement, taken from public acts and other documents, and shewing that, both in its general sense and usual acceptation, the term "Atlantic Ocean," is always so understood. Gulf of St. Lawrence.

Amongst other proofs, we refer more particularly to those drawn from the grant of Nova Scotia to Sir William Alexander, from the commissions of the Governors of Nova Scotia, New Brunswick, the Province of Quebec and Canada, and from the provision respecting captures in the treaty between Great Britain and France of 1783. And we will now, in order to remove any possible doubt on the subject, examine more closely an instance which had only been adverted to, and where the meaning and effect of the expressions used were considered with deliberate attention.

In the first project of a treaty, which was presented by the American Plenipotentiaries, in the course of the negotiation at Ghent, a provision was, as usual, inserted for the limitation of captures subsequent to the signing of the treaty. The clause, which appears to have been borrowed from that which had been agreed to, between Great Britain and France, in 1783, was in the following words, viz: "that the vessels and effects which may be taken in the Channel, and in the North Seas, after the space of ——— from *that of the signature* hereof, shall be restored on each side; that the term shall be ——— from the Channel and the North Seas to the Canary Islands inclusively, *whether in the Ocean or the Mediterranean:* of ——— from the said Canary Islands to the equinoctial line or equator, and of ——— in all other parts of the world, without exception." This provision was at first agreed to by the British Plenipotentiaries, with a verbal amendment as to the Mediterranean, and substituting the words "from the period of the exchange of the ratifications" to "that of the signature" of the treaty.

It having been, at the same time, proposed by the British Plenipotentiaries, that the ratifications should be exchanged at Washington, it was perceived that the limitation of captures ought to be shorter on the American than on the European coasts.

And accordingly they proposed, at a subsequent conference, the following substitute: (*e*)

"That all vessels and effects which may be taken, after the space of twelve days from the period of the exchange of the said ratifications, upon all parts of the coast of North America, from the latitude of 23 degrees north to the latitude of 47 degrees north, and as far eastward in the Atlantic Ocean as the 65th degree of west longitude, from the meridian of Greenwich, shall be restored on each side.——— That the term shall be thirty days in all other parts of the Atlantic Ocean, as far eastward as the entrance of the British Channel, and southward as far as the equinoctial line or equator; and the same time for the Gulf of Mexico and all parts of the West Indies. ——— Forty days for the British Channel and the North Seas; the same time for all parts of the Mediterranean.——— And one hundred and fifty days for all other parts of the world, without exception."

The words used in reference to the period of twelve days, viz: "upon all parts of the coasts of North America," embrace, of course, all the adjacent Bays and Gulfs as far north as the latitude of 47 degrees. But it will be seen, by referring to any map,(*d*) that that parallel of latitude touches the northern extremities of the Islands of Cape Breton and St. John, leaving, south of it, a very small portion only of the Gulf of St. Lawrence. Almost the whole of that gulf, (including the entrance of the river of the same name, the Straits of Bellisle, and those which lie between Cape Ray, of Newfoundland, and the North Cape of Cape Breton,) lies north of that latitude, and is not, therefore, included within the provision limiting the captures to twelve days.

(*e*) See project of Treaty and Protocol of the Conference of 1st Dec. 1814.—Written Evidence, No. 46.
(*d*) See Map A and printed Maps.

Gulf of St. Lawrence.

The Gulf is not included in the forty days' provision, which applies only to the British Channel, the North Seas and the Mediterranean. And it must, therefore, have been necessarily comprehended in the term of thirty days, which extends to *all other parts of the Atlantic Ocean* as far east as the British Channel, and south as the Equator; unless it should be supposed to have been included in the term of "150 days for all other parts of the world without exception:" and this supposition is untenable.

The Gulf of St. Lawrence, particularly the Straits above mentioned and the entrance of the River St. Lawrence, are the highway, and form the only outlets for the whole trade between Great Britain and Quebec; a trade which was, at that time, carried on exclusively in British vessels. To have, therefore, included that gulf within the term of 150 days, would have been tantamount to a permission to the American armed vessels and privateers, coming from ports within fourteen days sail of the entrance of the gulf, to intercept and capture, without any difficulty and with impunity, the whole of that trade, during the space of more than four months. This is too absurd to have been intended by the British Plenipotentiaries: and what proves, beyond doubt, that such was not their intention, is, that the period for allowing captures in the gulf was ultimately made *not longer* but *shorter than thirty days:* which was effected, by extending the period of twelve days "upon all parts of the coast of North America," as far north as the latitude of 50 degrees. (*e*)

It must also be observed, that the British Plenipotentiaries, in making that proposal (of the 1st December, 1814), had duly attended to the propriety of specifying, by their distinct names, those outlets or seas respecting which there might be some doubt; and which, from long and common usage, might be considered as not included within the term "Atlantic Ocean." Amongst others, "the Gulf of Mexico and all parts of the West Indies" were distinctly specified, as coming within the term of thirty days; and the Gulf of St. Lawrence was not named, it being perfectly well understood, that it was of course included in the term "all other parts of the Atlantic Ocean."

It cannot, therefore, be doubted, that the rivers which fall into the Gulf of St. Lawrence, are clearly embraced by the term, "Rivers that fall into the Atlantic Ocean;" that the North-west Angle of Nova Scotia and the boundary line, extending thence westwardly, designated in the treaty as being "on and along the Highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean," may, in strict conformity with that provision, be equally placed on and along highlands dividing the tributary streams of the River St. Lawrence, either from those of the River Ristigouche, or from those of the River St. John; and that, whether it shall be on the one or on the other, depends on the place where the due north line from the source of the River St. Croix meets the Highlands in which the tributary streams of the River St. Lawrence have their source; since such Highlands alone can divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

There is but one circumstance which, though not adverted to in the British Statement, may give rise to an objection, and makes a difference in the arguments, derived from the intentions of the parties, as applied to the Ristigouche and to the St. John.

It is known by the last surveys, as exhibited in the map A, that the due north line does not reach the Highlands, in which the tributary streams of the River St. Lawrence have their source, until after having crossed several branches of the Ristigouche. The termination of that line, or North-west Angle of Nova Scotia has, therefore, in strict conformity with the express terms of the treaty, been found to be on the highlands which divide those branches from the rivers that empty themselves into the River St. Lawrence.

(*e*) Treaty of Ghent, Art. 2d.—Written Evidence, No. 1.

The position of that point was distinctly determined by the terms of the treaty; but it was impossible that the precise spot of ground where that angle would be found, could be ascertained before the due north line had been actually surveyed. And it appears that, misled by an error in Mitchell's Map, the framers of the treaty of 1783 may well have believed, that the due north line would not cross any branch of any of the rivers that fall into the Gulf of St. Lawrence, and that the North-west Angle of Nova Scotia would be found on the Highlands which divide the tributary streams of the River St. Lawrence from those of the St. John. Gulf of St. Lawrence.

The most favorable inference to the British claim, that can be drawn from the erroneous opinion of the negotiators on that point, is founded on the double supposition, 1st. That they did not perceive, that the definition of highlands, which they adopted in the treaty, would embrace, should they happen to be mistaken in their opinion, the case which has actually taken place; 2dly. That they did intend to allot, at all events, the whole of the rivers falling into the Gulf of St. Lawrence to Great Britain, and that, had they known that the due north line would cross the Ristigouche, before it reached the highlands in which the tributary streams of the River St. Lawrence have their sources, they would have fixed the termination of that line, and the North-west angle of Nova Scotia, on the highlands which divide the waters of the Ristigouche from those of the St. John; and would have defined the boundary line, as extending thence, along the highlands which divide the rivers that empty themselves, either into the Gulf or into the River St. Lawrence, from those which fall into the Atlantic Ocean.

It is therefore evident, that a construction of the treaty, conforming with that presumed intention, is the utmost extent of what may possibly be claimed by Great Britain, under color of the erroneous opinion, entertained by the negotiators, respecting the length of the most westerly branches of the Ristigouche.

But the most westerly sources of a river that falls into the Gulf of St. Lawrence, are placed, in Mitchell's Map, only five miles east of the due North line.

Those sources belong in fact to the River Ristigouche which empties into the Bay des Chaleurs, although Mitchell has erroneously laid them down as being those of the River Miramichi which he designates by the name of Ristigouchi, and has made the true Ristigouche much too short. But those differences do not affect the question; it being sufficient that the sources are laid down as those of a river which empties itself into the Gulf of St. Lawrence.

It may therefore, with equal or greater probability, be presumed, that the framers of the treaty, though believing that this line would not cross that river, were sufficiently aware, that, since the interior part of the country had not been explored, reliance could not be placed, at least within five or ten miles, on the positions assigned by Mitchell to water courses and other places in the interior. And on that supposition, it being deemed necessary to provide for the contingency of an intersection by the north line of the river aforesaid, the terms used in the treaty would be adopted, with a perfect apprehension of their effect on the contingency, if it should take place.

It may also be observed, that the negotiators could not have attached much importance to the fact, whether the due North line would intersect, or pass west of the rivers which fall into the Gulf of St. Lawrence; since that circumstance could not affect the extent of territory falling to the share of the two powers respectively.

All those suppositions, on either side, rest on mere conjectures. It is probable that the framers of the treaty entertained the erroneous belief, that the due North line would not cross the River Ristigouche. All that is well ascertained is, that, contrary to that probable expectation, the North-West angle of Nova Scotia has been found on the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those that fall into the Gulf of St. Lawrence, instead of those that fall into the Ri-

Gulf of St. Lawrence.

ver St. John; and that, whether on the one, or on the other of those two highlands, the place, where thus found, is clearly embraced by the express terms of the treaty.

Under those circumstances it would be contrary to justice and to every principle of sound interpretation, to substitute, to the express terms of a treaty, presumed intentions, not proved, but only inferred from an erroneous opinion of the negotiators, on which they may or may not have acted, and on which, from the terms used in the treaty, it must be presumed they did not act. It is sufficient that the highland, which divides the waters of the St. John from those of the Ristigouche, *is not*, and that the Highland, which divides the waters of the Ristigouche from those of the River St. Lawrence, *is* a Highland that divides an Atlantic River from one that empties itself into the River St. Lawrence. (*f*)

"The first general maxim of interpretation is, that it is not permitted to interpret what has no need of interpretation."

"Those who dispute the sense of a clear and determinate article, are accustomed to draw their vain [illegible] from the pretended intention and views of the author of that article. This is a rule more proper to repel them, and which cuts off all chicanery. *If he, who can and ought to have explained himself clearly and plainly, has not done it, it is worse for him: he cannot be allowed to introduce subsequent restrictions, which he has not expressed.*"

"There can be no secure conventions, no firm and solid concession, if these may be rendered vain by subsequent limitations that ought to have been mentioned in the piece, if they were included in the intentions of the Contracting Powers." (*g*)

The correct principles, thus laid down by one of the most eminent writers on the Law of Nations, may perhaps find their application in other parts of the argument. In the question particularly now under consideration, it is sufficient to observe that, if it had been intended by the treaty, that the due North line should not cross the Ristigouche, and that the North-West angle of Nova Scotia should not be placed on the Highlands which divide the branches of that river from the tributary streams of the River St. Lawrence, this could and ought to have been explained clearly and plainly in the treaty itself; and that Great Britain having not done it, she cannot be allowed, according to the principle laid down by Vattel, to introduce any restrictions or limitations, that ought to have been mentioned in the treaty, if they were included in the intentions of the Contracting Powers.

If there was even complete proof, that it had been the intention of the framers of the Treaty that the whole of the waters of the Gulf of St. Lawrence should fall within the dominions of Great Britain; another important consideration forbids any claim, on the part of Great Britain, to appeal from the terms of the treaty to those intentions.

The most easterly river, which falls into the Bay of Passamaquoddy, is that which, in Mitchell's Map, is designated by the name of St. Croix. The true Indian name "Magaguadavic" is given to it in Map A. The westerly river called "Schoodic" is, in Mitchell's Map, designated by the name of Passamacadie River.

The Commissioners appointed in pursuance of the 4th article of the treaty of 1794, to decide which was the true River St. Croix, had before them the whole of the evidence,

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(*f*) Unless it should be insisted that the rivers that empty themselves into the Gulf of St. Lawrence must be considered as falling into the River St. Lawrence, a supposition which has been disproved in the first American Statement.

(*g*) Vattel, Book 2d, Ch. 17. § 263, 264.

which proves, that it was by Mitchell's Map that the framers of the treaty of 1783 regulated their joint and official proceedings. In addition to the depositions of Mr. Jay and of Mr. Adams, taken at that time, we may quote Mr. Adams' letter to Lieut. Governor Cushing, of 25th October, 1784. Gulf of St. Lawrence.

"We had before us, through the whole negotiation, a variety of maps, but it was Mitchell's Map upon which was marked out the whole of the boundary lines of the United States; and the River St. Croix which we fixed on, was upon that map the nearest river to St. John's; so that in all equity, good conscience and honor, the river next to St. John's should be the boundary." (*h*)

Notwithstanding that clear evidence; although the easterly river is most distinctly named and designated as the River St. Croix in Mitchell's Map; although it is from the source of that same river that Mitchell has drawn the due north line, forming the Western Boundary of Nova Scotia (or Sir Wm. Alexander's Grant;) although the fact, that that map had regulated the proceedings of the negotiators, was fully acknowledged; and although there was not the least doubt about their intentions: yet the decision was, that, according to the treaty, the Schoodic or Westerly River was the true St. Croix.

This decision was made too by an American citizen, who was selected as Umpire by the other Commissioners, and who conscientiously decided against the United States, because the River St. Croix, being no otherwise designated in the treaty than by its name, or, as having its mouth in the Bay of Fundy, he had no other duty to perform but to ascertain, without regard to the intentions of the parties, which was the *true* River St. Croix. (*i*)

It was conclusively proved, that the Island, from which the river must have derived its name, and to which the first discoverer (De Monts) had given that of St. Croix, (*k*) was one situated within and some distance up the Schoodic. And the Umpire argued that, as Mitchell must, by his River St. Croix, have intended that in which the Island of St. Croix should be found to be situated, his mistake must be corrected, and could not affect the question.

By that decision the United States have, contrary to the well ascertained intentions of the framers of the treaty, been deprived of the whole territory, contained between the Rivers Magaguadavic and Schoodic, and between the two lines drawn due North to the Highlands from the sources of those two rivers respectively, (*l*) containing about three thousand and eight hundred square smiles. And the effect of the decision has further been, to deprive them of the Island of Grand Menan, and of those in the Bay of Passamaquoddy, all of which lie west of a line drawn from Cape Sable to the mouth of the River Magaguadavic, and therefore had never been within the limits of the Province of Nova Scotia.

Independent of the loss of territory, the boundary thus fixed is, and has proved to be, attended with as much if not more inconvenience and danger, either in time of peace or of war, to the United States, than can possibly arise to Great Britain from any part of that now in question. To that definitive decision, no objection was or could be made: nor did it even excite any complaint against the respectable citizen, who, in making it, performed a painful but sacred duty. It is now adverted to, only in order

(*h*) Written Evidence, No. 22, page 306.

(*i*) Written Evidence, No. 36.

(*k*) Yet the name of St. Croix was for the first time given to the *River*, in Sir William Alexander's Grant, of the year 1621. Lescarbot, published in 1618, gives it no name; and Champlain, in the original edition of 1613, gives it no other than that of *Riviere des Etchemins*. Written Evidence, No. 36, pages 277 and 278.

(*l*) The lines O A and S T in the American Transcript of Map A.

Gulf of St. Lawrence.

to point out, how unjust it would be, to apply, on this, a different rule from that which was adopted on a former occasion; and, after having decided, at one time, in conformity with what was deemed the true meaning of the terms of the treaty, and in direct opposition to Mitchell's Map, and to the clear and acknowledged intentions of the negotiators, to substitute, in this case, to express terms of the treaty, which admit of no doubt, a construction founded on a mere than doubtful intention, inferred only from an error in that Map.

The question would have been different, had the error induced the negotiators to define the boundary in such terms as would have rendered it impossible to execute the treaty according to its tenor.

This is not a hypothetical case. The framers of the treaty, misled by another and more fatal error in Mitchell's Map, defined the boundary from the most North-western point of the Lake of the Woods, as being "on a due West course to the River Mississippi." It was afterwards ascertained, that such line would pass North of the most Northern sources of that River, and that its length, as designated by the treaty, was therefore indefinite.

In that case, as the treaty could not be executed, it became necessary to provide by a new negotiation for an amicable settlement of the question. No such difficulty occurs in the case now under consideration, because, notwithstanding the error in Mitchell's Map, and whatever may have been the belief of the negotiators, the terms of the Treaty cover the contingency which has taken place, and can be executed according to their tenor.

§ 6.

Objections derived from the signification of the term "Highlands."

Highlands.

It is contended, on the part of the United States, that the word "Highlands" is, in its general sense, an indeterminate and relative term; that the property of dividing the rivers designated by the Treaty, is that which affixes to that expression a definite and precise meaning; and that, independent of any other consideration, it was for that reason judiciously selected, in reference to an unexplored country, as applicable to any ground along which the line dividing those rivers should be found to pass. The position of the highlands being clearly ascertained by the indispensable condition, that they must divide certain specified rivers, any objection derived from a presumed meaning of the word "Highlands" refutes itself, if its object be to divest them of that essential character.

The most common error in relation to that subject is that of supposing, that "highlands which divide rivers" must necessarily be mountains.

Because the Alps divide the rivers of Italy from those of Germany and France; because these are divided from those of Spain by the Pyrennees; because, in America, the Allegheny Mountains, for an extent of several hundred miles, divide the sources of the rivers which fall into the Gulf of Mexico, from those of the rivers which empty themselves into the main Atlantic Ocean; it seems to have been concluded by many, (*m*) whose opinion was founded only on an erroneous analogy, that the highlands

(*m*) Amongst others, the Agent of the United States under the 5th article of the treaty of 1794, (Mr. Sullivan,) as quoted by the British Agent in the course of the proceedings under the late commission. Mr. S., though a man of extensive learning, was not probably acquainted with the technical meaning of the terms "highlands" and "height of land;" and he does not appear to have investigated any other branch of the subject than that on which he was appointed to argue, namely, which was the true St. Croix? Yet, although he seems to have confounded "highlands" with "mountains," and to have

which divide the rivers, that, in the territory in question, flow in opposite directions, must also be a continuous chain of conspicuous mountains, soaring above all the adjacent country. But nature is not so uniform in her works, as the tendency of the human mind to generalize would make her; facts will overset systems formed before they had been ascertained: and the ridges which divide the sources of the River St. John, from the tributary streams of either the River St. Lawrence or the Penobscot, as those which separate the Borysthenes and the Volga from the Dwina and the Neva, though they may not have the character of conspicuous mountains, are not the less embraced by the general expression of "highlands" which divide those rivers respectively. Highlands.

It appears to have been now ascertained, that there is not, East of the sources of the Chaudiere, any continuous and conspicuous chain of mountains. The ridges run in various directions; their course being generally parallel to that of the rivers, instead of dividing them from each other at their sources. And a new definition of the term "Highlands" is now suggested, as being apparently better adapted to the ground over which the British line must pass.

It is asserted, on the part of Great Britain, that that term implies *high*, i. e. *elevated*, lands; or, in other words, a generally elevated and mountainous tract of country; it not being necessary, however, that those highlands should present an absolutely unbroken and continuous ridge, without the intervention of valley or swamp.

This definition is so vague, that if adopted it would only open a new field for discussion, there being no precise criterion by which to judge whether the line claimed by either party has the general elevation required, and passes along, or near, a sufficient number of mountains, and through no more than its due proportion of valleys and swamps.

It will accordingly be found, that, whilst the notion of a continuous and conspicuous chain is abandoned, so far as relates to the line claimed on the part of Great Britain, she continues to require, that there should not be found in the dividing highlands claimed by the United States, any of those depressions, valleys and swamps, which are admitted by the meaning she attaches to the term "Highlands."

If it is intended to divest this presumed mountainous country of the character of dividing the rivers prescribed by the treaty, the pretended definition is not merely an explanation of the term, but a substitution of the words, "a generally mountainous country," to the express terms of the treaty, "the Highlands which divide the rivers," &c.

If it is intended to preserve the conditions prescribed by the treaty, the supposition that the boundary line must be along the mountainous country which divides the rivers, &c. would be of no avail to Great Britain, since her line does not divide the rivers designated by the treaty. And this double condition implies contradiction, since, in their total ignorance of the nature of the intervening country, it was impossible for the negotiators to divine, whether a line, dividing the rivers specified by the treaty, would also be found to extend along a *generally mountainous country*.

Although the British definition is totally inapplicable to a boundary line, an extensive district of country generally mountainous may, not in reference to such a line, but as contradistinguished from another tract of country, be designated with propriety

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been embarrassed by the information, (correct or erroneous,) that the highlands designated by the treaty were not a chain of conspicuous mountains, that circumstance did not prevent his forming a correct opinion on the main question, and clearly seeing that the boundary line must, according to the express terms of the treaty, be along the ground which divides the rivers therein specified, without regard to its nature or character. And the boundary is laid down accordingly, in the map annexed to his History of the District of Maine. (Topogr. Evidence, No. 36.)

Highlands. by the name of highlands. Thus the Northern part of Scotland has received that appellation, in order to distinguish it from the Southern part, known by the name of Lowlands. (*n*) Those Highlands comprehend an extensive country, rugged and mountainous, intersected by rivers and valleys, and without any conspicuous ridge dividing the rivers that flow in opposite directions.

If Great Britain, for any purpose whatever, thought it proper to divide that Northern part of Scotland into two districts; and the line, intended to divide those districts, was described only as running generally along the Highlands, it would be altogether indefinite and unintelligible. But if the line was defined as being, from the Northern sources of Loch Fine, along the Highlands which divide the rivers that empty themselves into the German Sea, from those which fall into the main Atlantic Ocean, to Duncansby Head; there is no Engineer, or Surveyor, appointed to survey the same, who would hesitate, without regard to the position of the most conspicuous and elevated mountains, to leave, through the whole extent of the line, from Loch Fine to Duncansby Head, the sources of all the rivers that fall into the German Sea, on his right hand, and, on his left, the sources of all those that fall into the main Atlantic Ocean. And in that course he would necessarily cross the summit level, which separates Loch Oich from Loch Eil, the elevation of which is only 94 feet above the level of the Sea; (*o*) since, by pursuing any other course, he must, contrary to the definition of the line, cross one of the waters to be divided; and without gaining any thing in point of elevation, since whichever of the Lochs or waters he would thus cross, must necessarily be lower than the summit level, which divides one from the other.

In the same manner, the boundary line between the United States and Great Britain would have been altogether indefinite and unintelligible, if described only as running generally along the highlands, or across a mountainous country. And since it is defined, as extending along the highlands which divide the rivers designated in the treaty, it must necessarily, through its whole extent, leave on each hand respectively the sources of the rivers thus directed to be divided: since it could not pursue any other course, otherwise than by crossing one of those rivers, and be there at a place less elevated than the dividing ridge; which for that very reason, and without regard to its absolute elevation, is justly entitled to the relative appellation of "Highlands."

Besides Scotland, there is another instance of the word "Highlands" being used, not as a generic term, but as the special appellation of a particular country or spot.

The chain, known in Virginia by the name of Blue Ridge, extends from the borders of North Carolina to those of the State of Connecticut. It assumes the various names of South Mountain, Flying and Oley Hills in Pennsylvania. "In New Jersey, it is called Miscapetcung, and in New York the Highlands." (*p*) The river Hudson breaks through the mountains at that place: the tide flows through and far above "that extraordinary and very singular passage:" and it is in reference to the much lower banks of the river above and below, that the portion of the chain which borders upon it has received that name. It is here, as in every other instance, used as a relative term, since it is not applied to any other portion of the chain.

But the supposition, in the British Statement, that the name of "height of land," given to that portion of the highlands which divides the waters of the Connecticut and of the Kennebec from those of the St. Lawrence, instead of being a generic term, was a distinctive and special appellation particularly applicable to that portion, is altogether erroneous.

(*n*) Written Evidence, No. 39.

(*o*) Supplement to Encyclopædia Britannica—Written Evidence, No. 39.

(*p*) Pownall, pages 27 and 11—Written Evidence, No. 40.

It is asserted that this height of land had been described in many public documents, as dividing the rivers aforesaid, to the West of the sources of the River St. John and of the Western head of the Penobscot. (q) Highlands.

The only public documents prior to the year 1783, in which that "height of land" had been described, are the Proclamation of 1763, the Quebec Act of 1774, and the Commissions of the Governors of the Province of Quebec. It was there described, not by that name, but by that of "Highlands:" and this term, which is used in reference to the Southern boundary of Canada, is not applied exclusively, in those public documents, to the small portion alluded to in the British Statement, but to the whole of the *Highlands* which extend from the Connecticut River to the Bay des Chaleurs.

The only colorable authority for the allegation is that of Governor Pownall. He says that the Connecticut River and the River Kennebec rise on the "Height of Land," in North Latitude 45° 10' and 45° 20' respectively; that "a range . . . . . crosses the East boundary line in New Hampshire, in latitude 42½°, and trending North-east forms the *Height of Land* between Kennebec and Chaudiere Rivers;" to which he adds, "of the nature and course of this *highland* I am totally uninformed;" and that "all the heads of Kennebec, Penobscot and Passamaquada Rivers are in *the* Height of Land, *running East-north-east.*"

Whence it seems to be inferred, not only that the portion of the dividing highlands in which the rivers Kennebec and Connecticut have their sources, was, prior to the treaty of 1783, emphatically called "the Height of Land;" but that an Eastern continuation of those Highlands, in which continuation, tributary streams of the Kennebec, and the rivers Penobscot and Passamaquoddy (the Schoodic) had their sources, was also known to Governor Pownall, and considered by him as the same height of land.

Governor Pownall had collected many facts, and relates them faithfully: and he carefully distinguishes his knowledge, when derived from surveys or actual explorations communicated to him, or made under his own direction, from the vague and often incorrect information he might have received in relation to other parts of the country, respecting which he previously declares himself to be uninformed.

It will be found by his own account, (r) that his knowledge extended, on the Kennebec, no higher up than the branch now called Dead River, and on the Penobscot than the River Matawamkeg, and that he was also well acquainted with the Passamaquada, or Schoodiac River, which he describes with considerable correctness, from the Schoodiac Lakes, to its mouth in the Bay of Passamaquoddy.

A nearly straight line drawn, on Map A, from the Schoodic lakes to the source of the Dead River, will shew the northern limit of his actual knowledge in that quarter. That line, through its whole extent, is from 50 to 60 miles south of the British line, and of "the height of the land running east-north-east," in which are to be found all the heads of Penobscot and Kennebec rivers.

Respecting the nature and course of the highland, beyond the source of the Dead River, whether extending North-eastwardly to the Bay des Chaleurs and the Gulf of St. Lawrence, or branching off East-north-east to the source of the Passamaquoddy River, he was, as he says, totally uninformed.

But he knew from all the maps then published, including that of Mitchell, that the River St. John penetrated in the country Westwardly, so as to have some of its sources opposite those of the Chaudiere and within less than 40 miles of the River St. Lawrence. And, although without any correct information respecting the nature of either of the dividing grounds, and with very little concerning their course, he was clearly assured, that two dividing ridges must be found; one extending to the Bay

(q) British Statement, page 31.
(r) See Note B at the end of this Statement.

Highlands. des Chaleurs, which divided the Northern tributary streams of the River St. John from the rivers that fall into the River St. Lawrence; and another extending to the sources of the Passamaquada River, which divided the Southern tributary streams of the St. John from the sources of the various branches of the Penobscot, and perhaps of the Kennebec.

He describes the first dividing ridge (page 9,) as mountains, which, in the latitude 45 or thereabouts, (that is to say about the source of the Dead River,) "turning Eastwards run away to the Gulf of St. Lawrence:" and again (page 14) in the following words, viz: "Going from the same line, in latitude 45, of the greatest height of this range of mountains, and following them to the East northerly: They all seem to range as united until again divided by the Bay of Chaleurs, an arm of the Gulf of St. Lawrence. All the rivers which have their sources amidst the Northern ridges of this great range, fall into Canada or St. Lawrence River, as the St. Francis, Chaudiere, and many others."

And he describes the other ridge (page 14,) as the "Southern ridges," amidst which those rivers have their sources exclusively, which fall into the Bay of Fundy or into the main ocean; and, (page 24,) as the height of the land, running East-north-east, in which are to be found all the heads of Kennebec, Passamaquoddy and Penobscot rivers.

But Gov. Pownall, though having a general knowledge of the position, of both the above mentioned dividing ridges had none (North-east and East-north-east of the sources of Dead River,) of their nature and character, with the exception only of that place, where the river Passamaquady has its source, which he says (page 20) "is formed by a succession of lakes and swamps."

It is therfore impossible that he should have intended, by the term "height of land" or "highland" to define the nature of the ground; or that he should have used it, as the special or local name of any particular highland or mountain. The term is clearly used by him, as a generic expression, and in reference only to the sources of rivers. It means with him nothing else than the ground which divides rivers flowing in different directions, whatever may be the absolute elevation, or in other respects, the character of such ground. And we will now give abundant proof that such is, in Canadian and New England geography, not only one of the significations, but the sole and exclusive meaning of the term "height of land;" and that the other expression, "highlands," though in its general sense applied also in cases where there is no division of rivers, is, whenever defined by the adjunct *dividing*, always used as synonymous with "height of land."

That the terms "height of land" and "highland" are used as synonymous, is proved beyond doubt, in relation to that very part of the dividing highlands described by the treaty, which is acknowledged by both Powers to be part of their boundary.

Thus Pownall (page 17) says, "a range running hence crosses the East boundary line of New Hampshire in lat. 44½, and trending North-east forms the *height of the land* between Kenebacg and Chaudiere rivers: of the nature and course of this *high land* in these parts I am totally uninformed."

Mr. Bouchette, Surveyor Gen. of Lower Canada, in his Topographical Description of that Province, in reference to the same highlands, which he expressly states to be a chain that "*commences upon the Eastern branch of the Connecticut River, takes a North-easterly course, &c.* and terminates near Cape Rosier," calls them "the ridge generally denominated the *land's-height*, dividing the waters that fall into the St. Lawrence from those taking a direction towards the Atlantic Ocean." (s) In his

(s) Bouchette, page 25—He designates again that chain by the name of "height of land," page 281. Written Evidence, No. 43, pages 303, 304.

large map, (No. 40,) he gives the name of "*height of land*" not only to the same acknowledged highlands, but also to those in the vicinity of Lake Temiscouata; whilst, in his topographical description, (page 535,) he says that the River du Loup, which has its source in that identical height of land, rises in the *highlands*. Highlands.

The Southern boundary of the Province of Quebec, or Lower Canada, is, in every public act of Great Britain which designates it, described as being along the *highlands* which divide, &c. The Committee of the Executive Council of the Province of Quebec, in their report of August 1787, speaking of that boundary, call it "*the height* of land." (*t*)

Finally, it is expressly acknowledged in the British Statement itself, that the distinctive appellation of the "*height of land*," was given to the *highlands* acknowledged by both parties, viz: those "dividing the waters that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence to the West of the sources of the River St. John, and (of) the western head of the Penobscot." Several other instances will be given of the two terms being used as synonymous, as we proceed to shew the signification of the term "height of land."

Governor Pownall says, (page 10,) "The Hudson's River arises from two main sources derived by two branches which meet about ten miles above Albany, the one called the Mohawk's River, (*rising in a flat level tract of country, at the very top or height of the land* to westward,) comes away East and South-east at the foot, on the North sides of the mountains, which the Indians call by a name signifying the endless mountains."

In this instance, the appellation of the "height of the land" is given, not to the mountains, the basis of which is washed by the river in its further course East and South-east from its source, but to the very spot in which the Mohawk River takes its source, and which divides it from the sources of rivers flowing into Lake Ontario; and that *height of the land* is expressly stated to be "a *flat level* tract of country."

Again, (page 13,) "Between the Northern part of the Hudson's River, and the Southern parts of the Lakes (*u*) and drowned land, is the *height of the land* of about 12 or 14 miles breadth, whence the waters run different ways, part to the South, part to the North; *over this Portage* to Lake George is a wagon road.

Across this very *height of land*, which divides the waters of two mighty rivers, the Hudson and the St. Lawrence, the Canal has now been opened, which unites Hudson's River with Lake Champlain, the outlet of which flows into the River St. Lawrence; and that *height of land*, the summit level of the Canal, the *point de partage*, is only 147 feet above the level of tide water, as will be seen by the report of the Commissioners, and by the map in illustration thereof. (*v*)

It is believed, that a more conclusive proof than is afforded by the two last quotations, cannot be adduced, that the appellation of "height of land" is given only in reference to the division of waters, and not in the least to the character and elevation of the ground.

The celebrated British traveller, Sir Alexander McKenzie, the first who, from the River St. Lawrence, penetrated through the Continent of North America, both to the Arctic and to the Pacific Oceans, has prefixed to the account of his voyages, a general history of the fur trade from Canada to the North-west. He describes, with great precision and correctness, the route pursued by their traders, from the junction of the Utawas River with the St. Lawrence, near Montreal, to the waters of the great

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(*t*) Written Evidence, No. 39, and British Evidence, No. 32.

(*u*) Viz: Lake Champlain and Lake George. The situation of the drowned lands, on the South Bay of Lake Champlain, (where the Canal terminates,) may be seen in the printed maps, Nos. 51, 55 and 56.

(*v*) See Written Evidence, No. 44, and Topographical Evidence, No. 52.

Highlands. Arctic, or McKenzie's River. And he designates the various dividing grounds traversed on that long voyage, in the following manner: (*w*)

Speaking of the Portage, from the source of the Petite Riviere, a tributary of the Utawas River, to the waters of the French River which empties into Lake Huron, he says, "the last (Portage) in this river (Petite Riviere) is the Turtle Portage, eighty-three paces, on entering the lake of that name, where, indeed, the river may be said to take its source. From the first vase to the great River, the country has the appearance of having been overrun by fire, and consists, in general, of huge rocky hills. The distance of this portage, which is *the height of land* between the waters of the St. Lawrence and the Utawas, is 1513 paces to a small Canal in a plain, that is just sufficient to carry the loaded canoe about one mile to the next vase, which is 725 paces."

Alexander Henry, an earlier traveller, who passed over the samo dividing ground in the year 1761, gives it the same appellation. (*x*) "We had now passed the country, of which the streams fall North-eastward into the Outaonais, and entered that from which they flow, in a contrary direction toward Lake Huron. On one side of the *height of land*, which is the reciprocal boundary of these regions, we had left Lake aux Tourtres and the River Matawa; (*y*) and before us, on the other, was Lake Nipisingue."

McKenzie, speaking of Lake Superior, says, "This Lake may be denominated the grand reservoir of the River St. Lawrence, as no considerable rivers discharge themselves into it. . . . . Indeed, the extent of country from which any of them flow, or take their course in any direction, cannot admit of it, in consequence of the *ridge of land that separates them* from the rivers that empty themselves into Hudson's Bay, the Gulf of Mexico, and the waters that fall in Lake Michigan."

Henry, navigating along the Northern shore of Lake Superior in the year 1775, says, "In the evening we encamped at the mouth of the Pitijic, a river as large as that of Michipicoten, and which in like manner takes its rise in the *high lands* lying between Lake Superior and Hudson's Bay. From Michipicoten to the Pijitic, the coast of the lake is mountainous: the mountains are covered with pine, and the valleys with spruce fir."

It will be observed, that the dividing ground which separates the rivers that fall into Lake Superior, from those that empty themselves into Hudson's Bay, which McKenzie calls *the ridge of land*, is by Henry designated by the name of *high lands;* and that this last writer, reserving that term for the dividing ground, gives the name of *mountains* to the coast of the lake.

McKenzie, after having described the route from the shores of Lake Superior, about forty miles to the North-west, says, "From hence the course is on the lake of the same name, (*Perche*) West-south-west three miles to the *height of land* where the waters of the Dove or Pigeon River terminate, and which is one of the sources of the great St. Lawrence in this direction. Having carried the canoe and lading over it 679 paces, they embark on the lake of *Hauteur de Terre*, which is in the shape of an horse-shoe. It is entered near the curve, and left at the extremity of the Western limb, through a very narrow channel, where the canoe passes half loaded for 30 paces with the current, which conducts these waters till they discharge themselves through the succeeding lakes and rivers, and disembogues itself, by the River Nelson, into Hudson's Bay."

(*w*) Written Evidence, No. 41.

(*x*) Written Evidence, No. 42.

(*y*) Matawa Sipi, the Indian name of Petite Riviere. (Henry, page 27.) Written Evidence, No.

Henry, speaking of the same dividing ground which he describes as a chain of lakes, says, "The region of the lakes is called the *Hauteur de Terre*, or *land's height*." Highlands.

Describing the rivers that empty themselves into Lake Winipic, McKenzie says, "those on the North side are inconsiderable, owing to the comparative vicinity of the *high land* that separates the waters coming this way from those discharging into Hudson's Bay."

Here McKenzie designates the dividing ground by the name of *high land*. Sometimes he calls it a ridge; when he speaks afterwards of the two places which divide the waters of the River Missinipi from those of Lake Winipic, and of McKenzie's River respectively, he uses, as synonymous, the word *portage*, (in English, *carriage*;) (*z*) which last designation is more particularly applied to the route or path across the height of land, along which the canoes are carried from water to water. But he never uses the term *height of land* itself, except for the purpose of designating the ground which does divide the rivers.

Mr. Bouchette, besides other instances, mentions "another and higher range of mountains *that forms the land's height*, and divides the waters that empty themselves into the St. Lawrence, from those that descend into Hudson's Bay." (*a*)

And, in another place, (page 36,) he says, "Between it (Lake Michigan) and Lake Huron, there is a peninsula that, at the widest part, is 150 miles, along which, and round the bottom of Michigan, runs part of the chain forming the *land's height* to the Southward; from whence descend many large and numerous inferior streams that discharge into it. On the North side of Lake Huron, many rivers of considerable size run from the *land's height* down to it. One of them, called French River, communicates with Lake Nipissing."

This last land's height is the same mentioned by McKenzie and Henry, as dividing the waters of the Utawas River from those of Lake Huron. That to the Southward of Lake Michigan, is that which divides its waters from those of the Illinois River, a tributary of the Mississippi; and this *land's height* is a swamp, and at one place a pond, which, when swelled by rains, discharges its waters both ways, so as that a canoe may then pass, without being carried across, from Lake Michigan into the Illinois River. (*b*)

It had already been shewn, that the term "highlands," taken in its general and indeterminate sense, was well adapted to the purpose of designating, in the most general manner, the unexplored ground dividing certain specified rivers, along which the boundary line described in the treaty was intended to pass.

The only objection to which the word thus selected was liable, was not, as has been suggested, that it implied a great absolute elevation, or a mountainous country, but that the term might then have been omitted altogether; inasmuch as the boundary line might have been described, merely as dividing the rivers intended to be divided, without using the word "highlands."

This would indeed have been but a verbal criticism, since the condition of dividing the rivers was sufficient to remove any doubt, as to the meaning of the term "highlands which divide the rivers," &c. But even that objection is now conclusively refuted.

It has now been most clearly shewn that, independent of its general sense, the word "*highlands*" is, in common, and as synonymous with "*height of land*," a term in general use in Canada, and in New England, (*c*) for the purpose of designating, without any reference to its elevation or nature, any species of ground which

(*z*) Portage *De Traite* and Portage *La Loche*. McKenzie, pages 93 and 104. Written Evidence, No. 41.

(*a*) Bouchette, page 29. Written Evidence, No. 43.

(*b*) See Note to Lake Michigan, in printed Map, No. 54.

Highlands. divides rivers flowing in different directions. And it has been incontestably proved, that the designation of "*height of land*," respecting the use of which for that purpose *exclusively*, there can be no doubt, has been and is perpetually applied to the very *highlands*, which are by both parties acknowledged to be part of those described and intended by the treaty.

The appropriate use of that term, in the treaty, is therefore in every respect indisputable. And it must also be recollected, that it was borrowed from the Proclamation of 1763, and other public acts of Great Britain; that the particular use of the term in that sense is of Canadian origin; and that it was for the first time used, and has been retained in subsequent public British acts, for the express and sole purpose of defining the boundary of Canada.

We will conclude this branch of the subject, by adducing a conclusive proof, that the term "highlands," cannot in the treaty, have been intended to imply "a generally mountainous country."

A mountainous country is actually delineated in Mitchell's Map, commencing more than forty miles West of the source of Mitchell's River St. Croix, and of the line drawn due North from that source. That mountainous country extends to the sources of the Chaudiere, consisting of several ridges or mountains, running in various directions, and one of them extending about 45 miles along the line now claimed on the part of Great Britain.

On the other hand, there is not, along the due north line, nor within forty miles of it, either to the east or to the west, a trace, on the map, of any ridge, or even of a single hill, from the source of the St. Croix, to the point which divides the northern sources of the St. John from those of the tributary streams of the St. Lawrence.

It is therefore evident, that if, by "highlands," the framers of the treaty of 1783 had meant "a mountainous country," they would have given to the Boundary line the direction necessary, in order that it should meet what was on Mitchell's Map laid down as such, and must necessarily have defined that line as running from the source of the River St. Croix, or from some point on the due North line, *Westwardly*, towards the country thus delineated on the map as mountainous.

And since, with that map before them, they defined the Boundary line as running due North from the source of the River St. Croix, to the highlands which divide the rivers, &c. although there was no mountain or hill delineated in the map, along or near any part of such due North line, it is equally clear that, by the "dividing highlands," where that line was to terminate and form the North-west angle of Nova Scotia, they could only have meant the ground in which the rivers that empty themselves into the River St. Lawrence have their sources, and which accordingly divides those rivers from those that fall into the Atlantic Ocean.

Surveys. It is manifest, from what precedes, that the United States consider the absolute elevation and mountainous character of the ground through which the lines claimed by each party do respectively pass, as questions of fact unimportant and irrelevant. Yet some of the remarks in the British Statement, connected with that subject, seem to require an answer. Referring, for details and proofs, to the maps and reports of the Surveyors, and to the Note C, at the end of this Statement, we will only state the substance of what is actually known in that respect.

The line, drawn due North from the source of the River St. Croix, has been actually surveyed to the point A of map A; and the British Surveyor, Mr. Bouchette, has also given a vertical section of the line as far North as the Ristigouche. As, according to the claim of the United States, their line along the highlands was traced by nature, it was unnecessary to have it surveyed until the Commissioners had made a decision with respect to the North-west angle of Nova Scotia; and no more than six places on that line were visited by the Surveyors.

(c) The term "*dividing ridge*," is that in general use in all the other parts of the United States; and it is used in the same sense, and without regard to the elevation of the *ridge*.

These are, 1. The North-west angle of Nova Scotia, which is on a table land of considerable elevation; 2. The Temiscouata Portage, where the line is found along a mountain 1300 feet above the level of the sea; 3. The heads of the West branch of the River St. John, which has its source in a considerable mountain; 4. and 5. The two Rimousky Portages which lie East of the Temiscouata Portage: in both, the sources of the rivers flowing in opposite directions take their rise very near to each other, in low swampy ground, forming a deep and narrow valley, bound, on each side, by elevated ridges parallel to the course of the streams: those valleys are of course depressions or gaps of the highlands of which those ridges are a part; 6. The River Ouelle's Portage, South of the Temiscouata, of the same character with the two preceding, with this difference, that the adjacent ridges are much lower. Surveys.

Since it is asserted by Great Britain, that the "highlands" must be elevated and mountainous, it might have been supposed that her Agents would have surveyed and taken a vertical section of the entire line claimed on her part, from Mars' Hill to the North-westernmost source of the Penobscot, where the conflicting lines meet. No portion of it, however, has been surveyed: three places only along it have been visited by the Surveyors: and, notwithstanding the parade of a large folio volume of surveys, there is amongst them, West of the due North line, but one British *survey* which relates to their line, and that in reference to a single point of it, (*d*) unless the name of survey be given to what is called Mr. Campbell's Sketch.

The three points visited are, 1. Mars' Hill, an insulated mount 1500 feet above the level of the sea, unconnected with any other ridge or hill; 2. and 3. The Portage visited by Mr. Loss, situated only five miles East of the point where the conflicting lines meet; and the Umbazucksus or Aliguash Portage, which is about eighty miles West of Mars' Hill. Both these are of the same character with the River Ouelle's Portage on the American line, there being hardly any sensible elevation between the sources of the rivers flowing in opposite directions. From this last Portage to Mars' Hill, no part of the British line has been surveyed, travelled over, or approached any where, except at its two extremities, nearer than twenty miles.

Not one of the mountains, delineated along the British line, in the British Transcript of the map A, has been visited by any of the Surveyors. The only knowledge of the mountainous character ascribed to that part of the country, is derived from views taken, from different distant points, by the British Surveyors, Mr. Odell and Mr. Campbell.

The substitution of those views to actual surveys having been objected to, a proposition to have new surveys executed, was made by the British Commissioner, when the Board, which had sat for near five years, was on the eve of terminating its labors. This proposal, made after years of explorations in search of highlands by the British Surveyors, at the joint expense of the two Governments, and without having surveyed any part of the line claimed on the part of Great Britain, was of course rejected.

It was, at a still later date, proposed by the British Agent, that the British Surveyors should be examined upon oath. This proposal was with equal propriety rejected, since neither were their *surveys* objected to, nor their veracity impeached; and distant and delusive views could not, by the aid of an oath, or through any other process, be converted into an actual survey of the ground.

The objection was, that a distant view, substituted to a survey, was no evidence of the existence, or position of a ridge or mountain; that it was physically impossible, for any person, without any instrument or observation, and in a country entirely covered with a dense forest, to ascertain whether the elevations of which he might

(*d*) Mr. Loss's Survey of the Portage between one of the Western sources of the South branch of the St. John and one of the North-west sources of the Penobscot—Surveys, Nos. 20 and 19.

Surveys. have a faint and distant view, extended in a direction parallel to that of the water courses, or separated these from each other at their sources; and that the total omission, in Mr. Odell's Sketch, of the water courses, which it was indeed impossible for him to have seen, gave to that part of the country the fallacious appearance of a continuous and huge mountain.

From the simple fact that this proposal was made, it is inferred, in the British Statement, that the statements and *delineations* of the British Surveyors are substantially correct.

The "survey and report of the American Surveyor, Johnson," is set aside, in another part of the Statement, as to a part of the American line, "as altogether ideal and unfounded in fact." It is declared to be so, because it was founded on *views* taken from Green Mountain, about forty to fifty miles distant from that part of the line.(*e*) Those views are admitted to be no evidence. But, as the qualifications and integrity of the American may be presumed to be equal to those of the British Surveyors, it is clear that, had sufficient attention been paid to the nature of the pretended surveys referred to, it would, by parity of reasoning, have also been declared in the British Statement, that "the surveys and reports of the British Surveyors, Mr. Odell and Mr. Campbell, must be set aside, being, with respect to the country along the British line, altogether ideal and unfounded in fact."

The mountainous character of the Eastern part of the British line is proved no otherwise than by those views and delineations. With respect to the next thirty miles, an appeal is also made to a brief and general account of that part of the country, then altogether unexplored, in Mr. Greenleaf's "Statistical View of the State of Maine," published in 1816. The Western part of the line seems to have been given up in the Statement, although some mountains, never visited by any Surveyor, have found place in that quarter, on the British Transcript of Map A, along the dividing line itself.

But it is important to observe, that the dividing highlands, acknowledged as such by both parties, do not appear to have, every where, that mountainous character which is required according to the British definition.

The Metjarmette Portage,(*f*) which is common to the two conflicting lines, is of of a similar character with those of the River Ouelle and of the Aliguash. The sources of the Metjarmette, of the Penobscot, and of the St. John, rise close to each other in the same swamp. The acknowledged highlands, for an extent of ten miles in a Southerly direction from that Portage, are designated in Mr. Campbell's Sketch as "low land." And the British Surveyor, Mr. Carlile, speaking of the height of land between the River Connecticut and the sources of the St. Francis, which is a tributary of the River St. Lawrence, says, that its sources are found in the same swampy ground, and a few rods from those of Indian and Hall's Streams, which empty themselves into the River Connecticut.

§ 7.

OBJECTIONS DERIVED FROM A PRESUMED CONSTANT ASSERTION OF THE BRITISH CLAIM SINCE 1783.

Attempts by Canada, 1789, 1794. Several documents have been adduced, with a view to prove that, from the year 1783 to this time, the Governments of New Brunswick and of Canada have both exercised jurisdiction over the contested territory. The total irrelevancy of those

(*e*) British Evidence, No. 11, page 155.

(*f*) The point L, on the American Transcript of Map A. The Metjarmette is a tributary stream of the Chaudiere, which falls into the River St. Lawrence.

which relate, either to the Fief of Madawaska, or to a notice concerning certain Indian hunting grounds, has already been shewn. Without dwelling at present on the palpable inconsistency of that simultaneous claim by both Provinces, we will briefly examine the acts alluded to. Attempts by Canada, 1783, 1784.

In the year 1784, a native Indian was tried and convicted by a Court of the Province of Quebec, and accordingly executed, for a murder, committed, as it is suggested, on the waters of the River St. John. In the indictment the place is stated in a vague and loose manner, viz: "*near* the village of Madawaska," the situation of which is not known, and without mentioning the Parish, or any other precise designation. According to the Quebec Gazette, the crime was committed *below Kamouraska.* This place being on the bank of the River St. Lawrence, that expression, in its usual acceptation, means "lower down on the river," and therefore within the acknowledged boundaries of the Province.

In the years 1789–91, a suit was instituted and judgment obtained, before the Court of Common Pleas of Quebec, by some inhabitants of Canada, against persons residing on the River Madawaska. The defendants having objected to the jurisdiction of the Court, alleging that they were resident of the Province of New Brunswick, the Court ordered both parties to bring proof, whether Madawaska and the Great Falls were in the Province of Quebec. The advocate of the plaintiffs declared that *he had no other proof* to produce, but their licenses and a preceding order of the Court in relation to the pleadings. This was an acknowledgment that he was unable to produce any proof, since, according to the Proclamation of 1763, the Governors were authorized to grant trading licenses, in reference to the residence of the traders, and not to the place of trade. The Court repelled the objection, solely on the ground of the defendants not having filed their exception and adduced their proofs in proper time and form. A Sheriff's notice was published in the Quebec Gazette, for the sale of lands at Madawaska belonging to the defendants: but it does not appear that the sale ever took place. Another judgment of the year 1792, by a Court in Quebec, of which no opinion can be formed, as it is not produced, is alluded to in a petition complaining that its execution was impeded by the Government of New Brunswick.

An extract from a list of the Parishes in the Province of Quebec, taken from the minutes of the Executive Council for 1791, includes that of Madawaska: the date is uncertain; and the act erecting the Parish is not produced. An order of the Council of the year 1785, for opening a road, from Kamarouska on the River St. Lawrence, to Lake Temiscouata at the foot of the dividing highlands, has also been adduced in evidence.

There must have been a great want of proofs, when such inconclusive documents are resorted to, in order to establish the facts of actual jurisdiction and possession. But it will be admitted that, taken together, they afford sufficient proof of the desire and perhaps a hope at that time, that the jurisdiction of the Province might be extended over the upper branches of the River St. John.

The following transactions throw a clearer light on the views, both of that Government at that time and of that of New Brunswick; and, whilst shewing their disregard, exhibit, throughout, involuntary acknowledgments of the right of the United States of that section of country.

In the year 1787, Mr. Holland was ordered, by the Governor of the Province of Quebec, to proceed to the Great Falls on the River St. John, in order to meet the Surveyor General of New Brunswick, and to assist in marking out the boundary, where it crossed the road of communication between the two Provinces.

In the interview which took place between them, each party was able to prove, that the territory in question was not within the limits of the other Province. The Surveyor of New Brunswick declared, that he would proceed to "the height of land

Attempts by Canada, 1783, 1784.

on the carrying place, situate between the River St. Lawrence and Lake Temiskouata, ... to examine which way the waters incline on the heights there, that by their course he might be enabled to ascertain the boundary between the Provinces of Quebec and New Brunswick, as all the streams running into the rivers which empty themselves into the River St. John, are in the Province of New Brunswick, and those which fall into the St. Lawrence, are in the Province of Quebec." And he produced his instructions from the Governor of New Brunswick, directing him to be governed by the Act of Parliament, called the Quebec Act.

On the other hand, although it could not be known with any certainty, at that time, where the due North line from the source of the River St. Croix would strike the highlands, it was highly improbable that the point of intersection would be found as far West as the Temiskouata Portage. Mr. Holland, after urging some other considerations, accordingly represented, "*more specially, that the fixing that limit would materially affect the Boundary between us and the United States of America; and that a large territory would thereby be saved, or lost to His Majesty's dominions.*"

A safe and convenient communication between the two Provinces was at all events to be preserved: and how to alter for that purpose the boundary of the United States, as defined by the treaty of 1783, was the difficulty. Mr. Holland appears to be entitled to the credit of having been the first to propose the substitution of a "country extremely mountainous," to the dividing highlands designated by that treaty. He observed that it was generally *understood* in Canada, "that the line between the Provinces of Quebec and New Brunswick, *should* run from the head of Chaleur Bay, along the highlands, in a Westerly direction to the Great Falls on the St. John's River, and from thence West, to the Westernmost, or main branch of the Connecticut River."

Mr. Holland had not at that time, any knowledge of the country: but he did not fail to find it agreeing precisely with his hypothesis. Not being able to agree with the Surveyor of New Brunswick, he proceeded, he says, with his party "to the Great Falls, where we found the country *extremely mountainous;* and, from information gathered from different persons, who have been from the St. John's River back in the country, and my own observations, have no doubt but that these mountains are the range which extend from the Bay of Chaleur to that River."

This substitution, (called a definition) of a generally or extremely "mountainous country," without regard to the division of certain specified rivers, to the "highlands which divide the rivers," &c. has the singular advantage of rendering them moveable at will. And it cannot be doubted that, had the British Agent under the late commission been from Canada, instead of New Brunswick; the mountainous country, extending Westwardly from the Great Falls, would have been pertinaciously contended for in behalf of Great Britain, instead of insisting, as according to the new hypothesis is now done, that the height of land, contemplated by the framers of the treaty, commences at Mars' Hill.

A committee of the Executive Council of the Province of Quebec, appointed the same year, (1787) to consider that subject, appears not to have sustained to its full extent Mr. Holland's report, and to have been of opinion that, in order to extend the jurisdiction of Canada over the River St. John, an *alteration* of its existing Southern boundary was absolutely necessary.

They say, "If the Province of New Brunswick may of right claim the sources of rivers that take their rise on the height of land *which divides the rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean,* the *ancient* limits of this Government will be curtailed towards New Brunswick, and Seigneuries under Canadian grants, as far back as the years 1623 and 1683, be taken into that Province," &c.

The committee then propose "that the Province of Quebec *be separated* from that of New Brunswick, by a line running along the highlands, which extend from the head of Chaleurs Bay to the foot of the great fall of St. John's River, and from thence, *crossing* the river, (so as to include the whole of the portage or carrying place) and continuing in a straight line towards the sources of the River Chaudiere, which rise on the highlands, which commence at the said head of the Bay of Chaleurs, and extend all the way to the North-westernmost head of Connecticut River." Attempts by Canada, 1788, 1794.

This paper is considered, in the British Statement, as "highly valuable and important, especially as proving that whatever disputes may have existed between the respective British Provinces, as to their several limits, not the smallest doubt seems to have been ever entertained by them as to the right of Great Britain to the whole territory thus contested between the Provinces."

And it is afterwards observed, that "the claims of this Province, (New Brunswick) and Canada, with respect to this and other parts of the territory in this quarter, are conflicting inter se, and shew the uncertainty of their respective Boundaries, which in fact, have never been settled, and may require the interference of the mother country to adjust: but these conflicting intercolonial claims, which have arisen since the Treaty of 1783, are altogether irrelevant to the present controversy between Great Britain and the United States, as a foreign power, and under that Treaty."

It is perfectly true, that the United States have nothing to do, and no interest whatever in that part of the Boundary, between New Brunswick and Canada, which was then and still remains unascertained. That portion, which has "not been settled, and may require the interference of the mother country to adjust," is only that which must unite the Western extremity of the Bay des Chaleurs to the dividing highlands, and which lies East of the contested territory.

But the Western boundary of New Brunswick is undisputed, and has, ever since the year 1763, (either as part of Nova Scotia or as New Brunswick) been, according to the Commissions of the Governors, a due North line from the source of the River St. Croix. Wherever that line may terminate, the territory West of it is indisputably without the boundaries of New Brunswick, and, according to the treaty of 1783, within those of the United States.

The Southern boundary of the Province of Quebec or Lower Canada is described, in the Commissions of the Governors, in the same words by by which the Northern boundary of the United States is designated in the treaty of 1783, and again in the same words (with only the substitution of "height of land" to "highlands") in the report of the committee of the Provincial Council; viz: "the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean." The territory South of that boundary is indisputably without the limits of Canada, viz: in New Brunswick, if East of the due North line from the source of the River St. Croix; in the United States, if West of that line.

We will now see, how far the Documents, relating to the conflict which took place at that time, sustain "the *right* of Great Britain to the whole territory thus contested between the Provinces."

Mr. Holland had, with his instructions, received from the Governor of Canada, (Lord Dorchester) copies both of the boundaries of the two Provinces, as prescribed by the Commissions of their Governors, and of the article of the treaty of 1783, relating to boundaries. And his declaration proves, that he was perfectly aware that, if the Southern boundary of Canada was along the highlands which divide the waters of the River St. John from those of the River St. Lawrence, the territory lying on the River St. John, West of the due North line, was part of the United States, and not of New Brunswick.

Attempts by Canada, 1763, 1794.

The Lieut. Governor of New Brunswick (Thomas Carleton) had made no mention in his instruction to the Surveyor General of that Province of its Western boundary, which, by his own commission, was prescribed to be "a line drawn due North from the source of the River St. Croix to the Southern boundary of the Province of Quebec." And without adverting, either to this, or to the boundary of the United States as fixed by the treaty, he only directed him to "be governed by the Act of Parliament for establishing the Province of Quebec, which determines that boundary to be *the highlands which divide those waters that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.*" (*g*)

The Surveyor General declared, that he was bound to observe those instructions, and, having accordingly only to determine the position of *those highlands*, gave it as his unalterable opinion, that the boundary ought to be fixed at the height of land on the carrying place, situate between the River St. Lawrence and Lake Temiscouata. The height of land between the River St. Lawrence and Lake Temiscouata, or, in other words, the portage of that name, was therefore, in the opinion of that officer, the boundary of the United States; since, by the treaty of 1783, that boundary is declared to be along "*the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.*"

It is equally clear, that the committee of the Executive Council of the Province of Quebec was quite sensible that the Southern boundary of that Province, as defined in the Commissions of its Governors, would curtail the *ancient* limits of Canada, as it existed under the French Government. What they propose is a substitution of Mr. Holland's hypothetical highlands to those that had been designated by the Proclamation of 1763, by the Quebec Act of 1774, by the treaty of 1783, and by all the commissions of the Governors of the Province, as its Southern boundary. They ask accordingly that the Province of Quebec *be separated* (hereafter) from the Province of New Brunswick by Mr. Holland's presumed highlands.

The admission that the change could not be effected, without an alteration of the boundaries prescribed by the Acts of the British Government, is tantamount to an acknowledgment that an alteration of the terms of the treaty was necessary for that purpose; since the same descriptive words are used in those Acts (*gg*) and in the treaty.

It was quite immaterial, as to the effect on the limits of Canada, by whom the adverse claim might be set up: and the committee declares, that the ancient seigneuries, including the Fief of Madawaska, and the Acadian or Madawaska Settlement, or, in other words, that the waters of the River St. John would be thrown out of the Province of Quebec, if *the height of land which divides the rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean*, could of right be claimed (whether by the United States or New Brunswick) as a boundary towards Canada. As it is not and cannot be denied, that the boundary thus described is that which, in the same words, is declared by the treaty to be the boundary of the United States, this declaration of the committee again explicitly admits, that the waters of the River St. John are included within the boundaries of the United States.

The conflict between the two Provinces on that occasion, and the confused arguments alleged on both sides, arose solely from their mutual wish, to appropriate to themselves what belonged to another party, and from the impossibility of reconciling the pretensions of either with, not only the treaty of 1783, but all the public acts of Great Britain relating to those boundaries.

Those documents, together with some others, were taken into consideration by the Executive Council, on the 4th August, 1792. And it was thereupon "Ordered

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(*g*) "Sea" in the Quebec Act and not "Atlantic Ocean." But Governor Carleton understood the two expressions to be, as they are in relation to this boundary, synonymous.

(*gg*) Viz: The Commissions of the Governors of the Province of Quebec.

that these papers be entered upon the minutes, and it is humbly suggested by the board, that it may be expedient to transmit copies to the Lieut. Governor of the Province of New Brunswick for his co-operating in representations *to call the attention of his Majesty's Ministers* to the adjustment of the limits necessary for preserving the public tranquillity on the borders of both Provinces."

Attempts by Canada, 1783, 1794.

It is not known to the American Government, whether any decision was had on that subject by that of Great Britain, or whether the abandonment of that pretension, on the part of the Province of Canada, was the natural consequence of the favorable change which, in the year 1794, took place in the relations between the two countries. But the fact is certain, that not a single subsequent act of jurisdiction over the contested territory, by Canada, has been adduced in evidence, (as certainly would have been done had any such existed,) or is known to have taken place.

It is on the contrary in proof, (*h*) that no grants of land have been made by the British Government of Canada, on the waters of the River St. John, or beyond the dividing highlands claimed as their boundary by the United States. And it is also proved, by the concurrent testimony of the inhabitants on the Madawaska River, that the Mount St. Francis, which divides the waters at the Temiscouata Portage, has, for more than thirty years, been considered as the boundary of Canada, and the place beyond which no process issuing from that Province can be served; and that a post, which was standing till very lately, had been placed there for the purpose of designating that boundary. (*i*)

We will observe that Great Britain, on the plea of certain infractions of the treaty of 1783, alleged by her to have been committed on the part of the United States, had suspended, on her part, the execution of those conditions of the treaty, respecting boundaries, which had not been carried into effect immediately after its conclusion. (*k*) It was only by virtue and in consequence of the treaty of 1794, that she surrendered, and abandoned her jurisdiction over several posts and countries, within the boundaries of the United States, of which she had remained in possession ever since the year 1783. (*l*)

It is therefore probable, that during the state of suspension and doubt, that existed with respect to the boundaries between the years 1783 and 1794, the Governor of Canada, who had certainly orders not to surrender the Western posts and territory, entertained the hope that the conditions of the treaty would never be fulfilled, and thinking it a favorable opportunity, made the attempt of extending his jurisdiction and actual possession in another quarter. It is certain that from that time to this day, the attempt has not been renewed by the Government of that Province.

Madawaska Settlement.

The grants of land to the Madawaska settlers, and the jurisdiction exercised over them, by the Government of New Brunswick, are no evidence of there having been an intention prior to the treaty of Ghent, on the part of that Government, to extend its jurisdiction over the contested territory.

The remote situation of an Acadian village, which, as laid down in Mitchell's Map, was at first on an Eastern branch of the River St. John, near the Lake Frencuse or Grand Lake, preserved its inhabitants from being transported and dispersed with the rest of the original, or French, inhabitants of Acadia. They appear subsequently, to have had their village on the river, ten miles above the present site of Fredericton: and they removed thence, upwards, towards the mouth of the River Madawaska, when the British, after the treaty of 1783, extended their settlements up the River

(*h*) See list of British Grants in Bouchette's Appendix. Written Evidence, No. 43.

(*i*) Written Evidence, No. 49.

(*k*) Secret Journals of Congress, IV vol. p. 186 and following.

(*l*) Treaty of 1794—Written Evidence, No. 1.

Madawaska Settlement.

St. John. They had always resided within the acknowledged boundaries of the British Province of Nova Scotia, now New Brunswick; and had never before submitted to the British Government.

The question respecting the true River St. Croix, was then undecided. It was impossible to know where the due North line from the source of that river would intersect the highlands. Under the belief that the Western branch of the Schoodic would be declared to be the true St. Croix, and if placing reliance on Mitchell's longitudes, the due North line would be supposed to pass West of the Madawaska Settlement.

An apology may be found in that circumstance, for the issuing of those grants, and even for the jurisdiction exercised by New Brunswick, so long as the due North line was not ascertained. It is only since the actual survey of that line, in the years 1817, 1818, that the continued exercise of that jurisdiction must be considered, and has been complained of, as an unjustifiable usurpation.

It is proper further to observe, that the Government of New Brunswick has, at no time, granted any lands in the contested territory, except to those Acadians, nor to any persons whomsoever, from the year 1794 till the year 1825.

British Claim not asserted, — 1794, 1814,

The understanding which prevailed on that subject, between the years 1794 and 1814, comes next in order.

With respect to Canada, it has already been shewn by an authentic document, that the Government of that Province has made no grant of land on the waters of the River St. John. What was understood to be the Southern boundary of the Province will still more clearly appear, from the description given by the Surveyor General, Mr. Bouchette. No higher authority can be adduced, in regard to that understanding, since it was a subject immediately connected with his official duties. He is not appealed to, to prove either where, according to the treaty, was the boundary of the United States, or the mountainous character of the height of land or ridges to which he alludes.

He mentions a "ridge, generally denominated the Land's Height, dividing the waters that fall into the St. Lawrence from those taking a direction towards the Atlantic Ocean. . . . . This chain commences upon the Eastern branch of the Connecticut River, takes a *North-easterly course*, and terminates near Cape Rosier, in the Gulf of St. Lawrence." (*m*)

He again states, (page 281,) that "from the Connecticut River the Height of Land . . . . . runs *to the North-east*, and divides the waters that fall into the Saint Lawrence from those flowing into the Atlantic; and which height, after running some distance upon that course, sends off *a branch to the Eastward*, that separates the heads of the streams falling into Lake Temiscouata and River St. John, and by that channel into the Bay of Fundy, from those that descend in a more direct course to the Atlantic. The *main ridge*, continuing its *North-easterly* direction, is intersected by an imaginary line, prolonged in a course astronomically due North, from the head of the River St. Croix; and which ridge is supposed to be the boundary between Lower Canada and the United States; at least, such appears to be the way in which the treaty of 1783 is construed by the American Government."

Mr. Bouchette expressly distinguishes two ridges, the main, or *North-easterly*, claimed by the United States as their boundary, and the *Eastward* branch, which separates the tributary streams of the River St. John from those which he describes as falling more directly into the Atlantic. This last ridge, he immediately after argues to be the true boundary of the United States, and is that which is claimed as such by Great Britain.

(*m*) Bouchette, page 28. Written Evidence, No. 43.

The only question concerning which the Surveyor General of Canada is appealed to as competent authority, is, which of those two ridges had been considered in Canada as the actual Southern boundary of the Province, such as it was established by the Quebec Act, of 1774, and designated in the Commissions of the Governors. This is stated also in the clearest manner by the Surveyor General.

British Claims not asserted, 1794—1814.

"The Province of Lower Canada is divided into the districts of Montreal, Three Rivers, Quebec, and Gaspé."

"The district of Three Rivers lies between those of Montreal and Quebec, is *bounded on the South by* part of the line of 45 degrees of North latitude, and the *ridge* of mountains stretching to the *North-east*.

"The district of Quebec extends . . . . . on the South side (of the River St. Lawrence) . . . . . as far down as Cape Chat, where it is met by the district of Gaspé; *to the Southward* it is bounded by the *ridge* of mountains already designated as the *North-easterly chain.*" (*n*)

Cape Chat, the Eastern boundary of the district of Quebec, lies East of the meridian passing by the source of the St. Croix. From the sources of the Connecticut River to the North-west angle of Nova Scotia, the United States are bounded on the North by the Canadian districts of Three Rivers and Quebec. And the *North-easterly* chain, or ridge of highlands, claimed by the United States as their boundary, is that which is declared by the Surveyor General of Canada to be the Southern boundary of those two districts. If any doubt should remain, as to what he intended by the *North-easterly* ridge, reference may be had to his large map of Lower Canada, (*o*) where the *North-easterly ridge* or *height of land* is, under that designation, laid down as dividing the River Verte and River Trois Pistoles, both emptyiug themselves into the River St. Lawrence, from the River St. Francis, the waters of Lake Temiscouta and other tributary streams of the River St. John.

That the same general understanding prevailed in New Brunswick, may be proved by the argument delivered, in the year 1798, by his Britannic Majesty's Agent, a distinguished inhabitant and public officer of that Province, before the Commissioners appointed under the 5th article of the treaty of 1794.

Three points were at that time contended for, as being the true source of that river. 1st. The source of its Western branch, which was the most Western point that could be selected, being the point W on the American Transcript of the map A. 2. The outlet of the Scoodiac Lakes on the same branch, being the most Eastern point, and marked Q on said transcript. 3. The source of the Northern branch or Cheputnatecook, marked O on said transcript, which was finally adopted, and which lies East of the source of the Western branch, but West of the outlet of the lakes.

Whilst the first and third points were the subjects of discussion, the British Agent strongly contended for the first, or most Western. And, in the course of his argument, after having urged the propriety of leaving to each party the sources of the rivers whose mouths are within their territories, respectively, he expresses himself in the following words, viz:

"A line due North from a source of the *Western* or main branch of the Scoudiac, or St. Croix, will fully secure that effect to the United States, in every instance, and also to Great Britain, in all instances, *except in that of the River St John*, wherein it becomes *impossible* . . . . . So that *this North line must, of necessity, cross the River St. John;* but it will cross it in a part of it (*p*) almost at

(*n*) Bouchette, pages 86, 283, 374 and 375. Written Evidence, No. 43.

(*o*) Engraved Maps, No. 40.

(*p*) Line WX on American Transcript of Map A.

British Claim not asserted, 1794—1814.

the foot of the highlands, and where it ceases to be navigable. But if a North line is traced from the source of the Cheputnatekook, (q) it will not only cross the River St. John within about fifty miles from Fredericton, the Metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs," &c.

. . . . . "In most, if not all, the maps of the interior country, published before the year 1783, ... a line drawn North from that termination (of the River St. Croix) upon those maps, will not intersect any of the rivers which empty themselves into the sea, to the Eastward of the mouth of the River St. Croix, *except the River St. John.*" (r)

The same officer, as his Britannic Majesty's Agent under the late Commission, sustained, with great zeal the new pretension of Great Britain: and his reasons, why his former opinion should not be deemed conclusive and binding, will be found in the Appendix. (s)

He is quoted as very competent authority of what was the prevailing understanding in New Brunswick, in the year 1798, and to shew that, at that time, with the treaty and printed maps before him, and with a general knowledge of the country, he construed that instrument, as every other person then did, according to its obvious and natural sense.

It was afterwards ascertained, that the Commissioners intended to declare, as the true source of the Schoodiac, the outlet of the lakes, (the point Q,) which is still further East than the source of the Cheputnatekook, (the point O.) But the American Agent proposed, in order to secure a small tract of valuable land between the two branches, to agree that the last mentioned source should be fixed as the true source of the river. As, for the reasons already alleged, the British Agent preferred at all events the most western point that could be obtained, he acquiesced in this proposal, provided it should be approved by Sir Robert Liston, then his Britannic Majesty's Minister to the United States. And this eminent person agreed to it for the very same reason. In his letter of 23d October, 1798, to the Agent, he says: (t)

"It appears to me evident that the adoption of the River Cheputnatecook, as a part of the boundary between His Majesty's American dominions and those of the United States, in preference to a line drawn from the Easternmost point of the Schoodiac Lakes, would be attended with considerable advantage. It would give an addition of territory to the Province of New Brunswick, together with a greater extent of navigation on the St. John's River," &c. (u)

Had it not been understood that the due North line must necessarily have crossed the River St. John, the whole of that river, and of its navigation, would have belonged to Great Britain, whatever was the point from which that North line should be drawn. It was only with the understanding that that line must, at all events, cross that river, that the extent of navigation secured to New Brunswick could be greater or less, as the North line crossed the river more or less Westwardly. Mr. Liston, therefore, construing the treaty as every other person did at the time, knew that the highlands, designated by that instrument, must be North of the River St. John's, and that the North line, in order to meet them, must cross the river.

American Claim asserted.

The assertion, in the British Statement, that the right to the possession of the contested territory was first called in question by the United States, and that only con-

(q) Viz: QR on American Transcript of map A.

(r) Written Evidence, No. 35, pages 272 and 273.

(s) Written Evidence, No. 55.

(t) Written Evidence, No. 61.

(u) Viz: the extent along said River, contained between the points where it is intersected by the lines OA and QR respectively.

structively, at the period of the negotiations at Ghent, in 1814, does not present a correct and complete view of what relates to that particular point.

American Claim asserted.

The *right* of Great Britain to the territory, had never been called in question, by the United States, before the negotiations at Ghent, in 1814, because it was then, for the first time, made known to them that Great Britain intended to set up such a claim. And her right to the *possession* of the Madawaska Settlement was not called in question, or even alluded to at Ghent, because it had not been ascertained at that time, whether that settlement lay East or West of the line drawn due North from the source of the St. Croix.

That line was not surveyed till the years 1817–1818: and this is also the reason why the inhabitants of Madawaska were included in the American Census of the year 1820, and not in that of the year 1810.

The remoteness of the territory on the waters of the River St. John, from the American settlements, which did not extend far up the Penobscot, had rendered other acts of jurisdiction, on the part of the United States, unnecessary, prior to the war, which was terminated by the Treaty of Ghent. And their subsequent forbearance, since that question has become a subject of discussion, notwithstanding the continued usurpation of New Brunswick over the contested territory, is very improperly converted into an assertion of exclusive and undisturbed possession, by Great Britain.

On the question of right, it was not even suspected, that there did, or could, exist any doubt. The boundary is laid down in all the maps of the District, now State of Maine, along the true highlands designated by the Treaty.(*v*) There was no hesitation or doubt on the subject, on the part of Massachusetts. She granted lands, as a matter of course, in that as well as in every other part of her territory.

As early as the year 1792, a contract was entered into, between that State and certain individuals, for the sale of a tract of land containing more than two millions of acres, and extending to the very highlands in question. Although the conditions of the agreement were not fulfilled by the purchasers, and it was not ultimately carried into effect, this tract, or another substituted for it, appears to have been surveyed, and is accordingly laid down in the maps of the District of Maine.(*w*) Actual grants of land were afterwards made by the State, and as late as the year 1813, to various academies, towns, and individuals.(*x*)

The obscure acts by which Canada had, during the years 1784–1794, attempted to extend her jurisdiction over the upper waters of the River St. John, and the application by the council of that Province, for an alteration of its boundaries, had remained of course entirely unknown to the Government of the United States; whilst that effort, and the complete abandonment of that pretension during the twenty subsequent years, must necessarily have been within the knowledge of His Britannic Majesty's Government. The reasons why the jurisdiction of New Brunswick had been extended over the Madawaska Settlement have been sufficiently explained. And the official declarations of the Chief Justice of that Province, in his character of Agent, and of His Britannic Majesty's Minister to the United States, leave no doubt that it was at Ghent, in the year 1814, that any pretension to the contested territory was, for the first time, suggested by the Government of *Great Britain*. If any further proof was wanted to establish that fact, it will be found in the manner in which that claim was brought forward in the course of those negotiations.

(*v*) Engraved Maps, Nos. 36, 37 and 38.

(*w*) Engraved Maps, Nos. 36 and 37. A discrepancy between the boundaries in the agreement and those in the Maps, not having been discovered till after the 1st January 1829, must be left unaccounted for.

(*x*) Written Evidence, No. 51.

Negotiations at Ghent

The British Plenipotentiaries at that time, when explaining what they meant by a revision of the frontiers generally, and after saying that Great Britain did not desire it with any view to the acquisition of territory, *as such*, enumerated amongst the subjects of discussion, not the ascertaining in conformity with the Treaty of 1783, but "such a VARIATION of the line of frontier, as might secure a direct communication between Quebec and Halifax."(*y*)

This was not a casual expression, but a deliberate and solemn exposition of the terms on which Great Britain proposed to make peace. One of the Plenipotentiaries, who now occupies a distinguished place in the British Cabinet, was at that time one of the Secretaries of State for the Colonial Department, and probably the member of the British Government most intimately acquainted with the interests and desires of the British Provinces, and with whatever related to that subject. There could not be a more express acknowledgment, than the proposition made under such circumstances, and in such terms, that the desired communication could not be obtained without a *variation* of the line established by the Treaty of 1783.

It was only after the explicit declaration of the American Plenipotentiaries, that they had no authority to cede any part of the territory of the United States, and would subscribe to no stipulation to that effect; and after having lost all hope of obtaining a variation of the line, that the British Plenipotentiaries changed their ground. It was then, for the first time, gratuitously asserted, that the American Plenipotentiaries were aware that the boundary *asserted at present by the American Government*, by which the direct communication between Halifax and Quebec became interrupted, was not in contemplation of the British Plenipotentiaries who concluded the Treaty of 1783.

Even this assertion was accompanied by a declaration, that the British had not anticipated the statement made by the American Plenipotentiaries,—viz: that they had no authority "to *cede* any part, however insignificant, of the territories of the United States, although the proposal left it open to them to demand an *equivalent for such cession*, either in frontier or otherwise."(*z*)

The American Plenipotentiaries answered, that they had never understood that "the British Plenipotentiaries who signed the treaty, had contemplated a boundary different from that fixed by the treaty, and which required nothing more in order to be definitively ascertained than to be surveyed in conformity with its provisions;" and that they had "no authority to cede any part of the State of Massachusetts, even for what the British might consider a fair equivalent." (*a*) And they subsequently declared "that they did not decline discussing any matter of uncertainty or dispute respecting the boundaries in that or in any other quarte ," and that they were "prepared to propose the appointment of Commissioners by the two Governments to extend the line to the highlands, conformably to the treaty of 1783." But they added that "the proposal, however, of the British Plenipotentiaries was not to ascertain, but to vary, those lines, in such manner as to secure a direct communication between Quebec and Halifax; an alteration which could not be effected, without a cession by the United States to Great Britain of all that portion of the State of Massachusetts intervening between the province of New Brunswick and Quebec, although unquestionably included within the boundary lines fixed by that treaty. (*b*)

To this last observation the British Plenipotentiaries replied, that the British Government never required that *all that portion* of the State of *Massachusetts* intervening between the province of New Brunswick and Quebec, *should be ceded* to

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(*y*) Written Evidence, No. 46—British Note of 19th August, 1814.
(*z*) British Note of 4th Sept.—Written Evidence No. 46.
(*a*) American Note of 9th September.
(*b*) American Note of 26th September

Great Britain, but *only that* small *portion* of *unsettled* country which interrupts the communication between Halifax and Quebec, there being *much doubt* whether it does not already belong to Great Britain. (*c*)

Negotiations at Ghent.

The proposal of the American Plenipotentiaries to appoint Commissioners was acceded to, and extended to the whole line of frontier, from the source of the river St. Croix, to the Lake of the Woods. And the contingency of a disagreement between the two Commissioners was provided for; no power to vary the line being given in either case; but the express purpose being, that it should be ascertained and surveyed in conformity with the provisions of the treaty of 1783.

Thus it appears, that the American Plenipotentiaries denied the intentions ascribed to the British Ministers who had signed the treaty; that they uniformly rejected any proposal to vary the line, and to cede any part of the territory of the United States, or of the State of Massachusetts; and that they agreed to the reference, only on the general ground of leaving to an amicable mode of settlement all the questions relative to the whole of their extensive frontier, which had not yet been actually ascertained and surveyed.

It will now be asked, whether a demand made, on a most solemn occasion, by the British Government itself, of a VARIATION of the boundary line defined by the treaty of 1783, at the same time that another demand was also made of one half of the great lakes, and of the rights of sovereignty over the shores secured to the United States by the same treaty; whether that demand, connected, not only with the intervening declarations of the British Minister to the United States, and of the British Agent on the adjoining portion of the same boundary, but also with the entire abandonment during the twenty preceding years, of any claim to the jurisdiction over the contested territory, by that British Province within whose boundaries, if belonging to Great Britain, that territory was clearly included; whether such demand, under such circumstances, was not a most explicit acknowledgment of the previous undoubted right of the United States to that territory, and does not decisively refute the late assertions of an exclusive and undisturbed possession by Great Britain, and of a constructive claim but lately advanced by America?

And it might also be asked, what degree of confidence the British Plenipotentiaries could have had in that claim, in behalf of Great Britain, so reluctantly suggested, and never, to the last moment, mentioned, but by the name of *cession*, with the tender of an *equivalent*, and in the shape of a doubt? And what was meant by that *small portion* of *unsettled* territory, not including therefore the Madawaska Settlement, the cession of which alone was required, and *to which alone* applied the concluding observation, that there was *much doubt* whether it did not already belong to Great Britain?

An allusion has been made, in the British Statement, to a letter written by one of the American Plenipotentiaries to his Government, subsequent to the signature of the treaty. Every thing contained in a letter of that description is wholly irrelevant to the question; since a minister, when writing *to*, does not act as the organ of his Government. It will be sufficient to observe here, in the first place, that it has been fully demonstrated, in the First American Statement, by the very document to which he appealed, that the American Plenipotentiary was altogether mistaken in supposing that the contested territory was not within the boundaries of the State of Massachusetts; and secondly, that if the boundary lines designated by the previous public acts of Great Britain, and adopted by the treaty of 1783, had embraced any portion of territory not included within the chartered limits of Massachusetts' Bay, such portion would nevertheless have undoubtedly belonged to the United States. (*d*)

(*c*) British Note of 8th of October.

(*d*) For some further observations on that letter, see Note D, at the end of this Statement.

New Brunswick Jurisdiction.

Much stress cannot be laid on the opinions or acts of either party subsequent to the treaty of Ghent, in relation to the contested territory which from that time became an avowed subject of discussion.

The continued jurisdiction of New Brunswick, even after the due north line had been surveyed, has already been adverted to. The grant of a tract of land in the year 1825, and the subsequent arrest and trial of an American citizen, have afforded just grounds of complaint. But it is remarkable, that those very acts afford an additional proof of that inconsistency which naturally grows out of the British pretension.

No act of the province of New Brunswick could make a place which lay West, to be East of the due North line, nor therefore remove the district occupied by the Madawaska settlers within the boundaries of the Province.

The only thing which is decisively proved by those acts is, that in the opinion of the New Brunswick authorities, the contested territory is not within the boundaries of Canada. And they do not seem to have perceived, that this was tantamount to an acknowledgment that it did belong to the United States. For, if not in Canada, it is because the pretended highlands, extending from Mars' Hill to the North-westernmost source of the Penobscot, are not the Southern boundary of that Province.

And since the Southern boundary of Canada is identic with the Northern boundary of the United States, if it is to be found North of those presumed highlands, and even of the River Madawaska, the territory lying South of it, and North of the line claimed by Great Britain, makes part of the United States.

Of this the British Government seems at last to have become aware. Hence the effort, with the aid of the fief of Madawaska, and of some ancient attempts which have not been renewed for more than thirty years, to substitute to the usurped jurisdiction of New Brunswick, a pretended possession derived from Canada.

Accordingly, in the "map of the British Possessions in North America, compiled from documents in the Colonial Department," and ordered to be printed in June 1827, by the House of Commons, (*e*) the due North line is made to terminate at the Ristigouche River; the boundary line between the United States and Canada is laid down, according to the British pretension, from Mars' Hill to the Western source of the Penobscot; and all that lies North of that boundary and West of the due North line, including the Madawaska Settlement, is made part of Canada and not of New Brunswick.

But, whilst trying to avoid the inconsistency growing out of the usurped jurisdiction of New Brunswick, the Colonial Department was, from the nature of the British pretension, necessarily drawn into another.

It is in proof, that the Western and Northern boundaries of New Brunswick, and the Southern boundary, of Canada have not been altered since the treaty of 1783; (*f*) that the legal North-west angle of New Brunswick is identic with the North-west angle of Nova Scotia, established in the year 1763, and referred to and defined in the treaty of 1783; and that that angle is accordingly at the point of intersection of the due North line with the Highlands designated by the treaty, and forming the Southern boundary of Canada.

Instead of being on any highland, the North-west angle of New Brunswick is, in the map in question, placed in the bed of the River Ristigouche. And, forgetting that, by the treaty, the summit of the North-west angle of Nova Scotia was also the summit of the North-east angle of the United States, the Colonial Department has

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(*e*) Engraved Map, No. 45.

(*f*) See Lord Aberdeen's Marginal Notes to Nos. 12, 14, and 16, of Mr. Barbour's List. Written Evidence, No. 31; and Governor's Commissions, Written Evidence, Nos. 3, 21, 37 and 38.

placed that North-east angle at Mars' Hill, fifty miles South of the point where it places the North-west angle of New Brunswick or Nova Scotia. Mars' Hill, the pretended North-east angle of the United States, so far from being the North-west, is not even one of the angles of New Brunswick, but only a point on one of its boundary lines. New Brunswick Jurisdiction.

The same contradiction attaches to the legitimate acts of New Brunswick, in reference to the territory within its acknowledged boundaries.

Supposing a due North-east line to be drawn from Mars' Hill towards the Bay des Chaleurs, every place situated North-west of that line, will of course be North-west of Mars' Hill; and this last mentioned point cannot be the North-west angle of New Brunswick, if any such place is within the boundaries of that Province.

Yet the jurisdiction of the province has uniformly been exercised, both before and since the claim to the contested territory has been a subject of discussion, far North-west of such supposed North-east line, as far at least as the Falls of the River St. John, and as the River Ristigouche above its junction with the Matapediac. Amongst the numerous annexed documents, (g) adduced in proof of that fact, will be found several laws for opening roads as far as the Ristigouche, for regulating the fisheries of that river generally, and for the erection amongst others of the county of Northumberland, and of the Parish of Eldon; as well as grants of land to Mann and others, on the Ristigouche, to John King, on the St. John at the mouth of Salmon River, and to A. Stewart, above the Great Falls of the St. John. The position of those various places will be found on the American Transcript of the map A, and are all of them North-west of Mars' Hill.

This last mentioned point, which is near forty miles due South of Stewart's Grant, was not therefore in the opinion of the authorities of New Brunswick, the North-west angle of that province And assuming the ground, that the contested territory was, as it is pretended there, a part of the province, the contradiction between that supposed extension of New Brunswick, and the assertion that Mars' Hill is its North-west angle, will appear still more forcibly, since it is evident that, in that case, the North-west angle must be found on the Temiscouata Portage, more than one hundred miles North-west of Mars' Hill.

SECOND PART.

THE BRITISH LINE EXAMINED.

§ 8.

TERMS OF THE TREATY

The Statement on the part of Great Britain, resolves itself into an attempt to shew that the River St. John is not one of those rivers falling into the Atlantic Ocean, which were *intended* by the Treaty to be divided from those which empty themselves into the River St. Lawrence: and that the highlands, described by the treaty as dividing those rivers from each other, are situated about 120 miles West of any part of the line drawn due North from the source of the River St. Croix, and extend only from the North-westernmost source of the River Penobscot, to the sources of the Connecticut River. Terms of the Treaty.

The various reasons alleged to sustain those two positions have been examined at large, and, it is believed, conclusively refuted. But, it was incumbent on Great

(g) See Written Evidence, Nos. 47 and 48, and Printed Statutes.

Terms of the Treaty.

Britain to have shewn, in the first place, that the boundary line claimed, in conformity with that hypothesis, could be reconciled with the terms of the Treaty. The true question at issue, and to which we must now revert, is, whether the North-west Angle of Nova Scotia may, in conformity with the treaty, be placed on or near a certain hill, which does not divide, and is not, in any direction, within 120 miles of any highlands that do actually divide the rivers designated by the treaty; and whether the boundary line may, in conformity with that instrument, for three-fifths of its extent from the North-west Angle of Nova Scotia, be along highlands which do not divide those rivers from each other.

The North-west Angle of Nova Scotia, is, by the treaty, declared to be "formed by a line drawn due North from the source of St. Croix River, to the highlands."

Immediately following the last mentioned words, viz: "to the highlands," the words (in reference to the boundaries,) are, "along the *said* highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean."

The words, "the said highlands," identify, therefore, the highlands at which the due North line terminates, with the highlands which divide the rivers specified by the treaty.

The East boundary of the United States, is by the treaty declared to be, "a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy, to its source; and from its source, directly North to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence."

Thus the line drawn due North, or directly North, from the source of St. Croix River, is, in two different clauses of the treaty, declared to extend to, and to terminate at, the highlands which divide the rivers designated by the treaty. That line is that which forms the North-west Angle of Nova Scotia. The Northern termination of that line, and the summit of that North-west Angle are identic. It appears impossible to have devised expressions, that could, with greater precision, have determined the position of the North-west Angle of Nova Scotia, as being that point, on the highlands which divide the rivers specified by the treaty, where the said highlands are intersected by the line drawn due North from the source of the River St. Croix.

It is impossible to form any conjecture of the reasons which may be alleged, in the Definitive Statement on the part of Great Britain, in opposition to those explicit and express terms of the treaty. We can only recur to those which were alleged by the British Agent and the British Commissioner, under the late Commission: and we may venture to assert, that, now as then, it will be necessary to resort, not merely to an unnatural interpretation, but to a positive alteration of the terms of the treaty, by the subtraction of some of the words used in it, or by the interpolation, or substitution of other expressions.

The British Agent argued, without taking any notice of the word *said*, which identifies the highlands on which the North-west Angle of Nova Scotia is placed by the treaty, with the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; and as if that word *said* made no part of that clause of the treaty. And, with respect to the description of the Eastern boundary, as contained in the latter clause, he contented himself with saying, that it must not be construed literally; which means, that that clause must be considered as null, since it is susceptible but of one construction.

The opinion of the British Commissioner may be considered as of greater weight; and we will quote his own words from his report to the two Governments.

"The extension of the due North line beyond the River St. John, does not agree with the words of either of the said treaties, which direct that the due North line from

the source of the River St. Croix, shall extend to the highlands, evidently meaning the *first* highlands, corresponding with the subsequent description, at which that line should arrive; for if the framers of the treaty had other high landsin contemplation, further North, they would have excluded the first highlands, by an express exception of them." (*h*) Terms of the Treaty.

Now, as the highlands for which the British Commissioner contends do not correspond with the subsequent description of highlands, viz: highlands which divide certain rivers specified by the treaty; it is clear, that what he means, and the alteration is explicitly adopted in the British Statement, is to substitute the words, "the first highlands at which the due North line should arrive," to the terms of the treaty. With respect to his last *argument*, it is sufficient to observe, that the framers of the treaty, by describing the highlands as dividing the rivers therein designated, did exclude all other highlands, including the first highlands, (so called) which the due North line might meet.

The British Commissioner further says:

"Had the highlands to be met with on the due North line, been intended to be those which divide the rivers, the words of the treaty would have been, *due North from the source of the St. Croix River, to the highlands which divide those rivers which empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean.*

"The reverse is the case; the due North line is to stop at the highlands, and from thence a second line is to commence, (which two lines form the North-west angle of Nova Scotia,) (*i*) and proceed in a Westerly direction, *along*, or *passing* those high lands which divide the rivers," &c. &c. &c. (*k*)

Here the British Commissioner positively asserts, that it was not intended that the termination of the due North line, (or North-west angle of Nova Scotia,) should be on the highlands which divide the rivers specified by the treaty. He insists, that the due North line is to stop at the highlands, meaning the first highlands met by that line, and that the dividing highlands are to be found only somewhere on the line which thence proceeds in a westerly direction. And he states what the words of the treaty would have been, had the dividing highlands been intended to be met by the due North line.

In order to shew, that, instead of proving what he wished to establish, the British Commissioner has been unconsciously drawn into an admission that the due North line must necessarily extend to the highlands which actually divide the rivers specified by the treaty, it is sufficient to compare the expressions, which, he says, should have been used, had the intention been such, with those actually used in the treaty itself.

By the Treaty.	*Proposed by British Com'r.*	*By the Treaty.*
From, &c. formed by a line, drawn due North from the source of St Croix River to the highlands, along the *said* highlands which divide those rivers th. empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to, &c.	From, &c. formed by a line, drawn due North from the source of St. Croix River to the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to, &c.	East by a line, to be drawn from its source, (of the St. Croix River) directly North to the aforesaid highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to, &c.

(*h*) Written Evidence, No. 53, page 373.

(*i*) The Angle thus described, is th North-east Angle of the United States, and not the Northwest Angle of Nova Scotia. This is formed, by the line drawn due North from the source of the St. Croix to the highlands, and by the highlands which extend from the point of intersection, not Westwardly to the Connecticut River, but Eastward, to the Bay des Chaleurs.

(*k*) Written Evidence, No. 53, page 376.

Terms of the Treaty

It cannot be denied, that those three modes of expression mean the same thing, and designate, with equal precision, the dividing highlands to which the due North line must be extended, and the Northern termination of that line, or North-west Angle of Nova Scotia.

This point of departure being thus expressly determined, the boundary line is declared, by the treaty, to be *from* that point, *along* the highlands described by the treaty, *to* the source of the Connecticut River.

But if, as is asserted by Great Britain, the due North line does not extend to the highlands which divide the rivers described by the treaty, the boundary cannot, *from* what she calls the North-west angle of Nova Scotia, *be along* those highlands; although it may *meet* them at the distance of 120 miles: and the assertion is, therefore, again, in this respect, in direct opposition to the express terms of the treaty.

According to the treaty, it is *from* the North-west angle of Nova Scotia that the boundary line is declared to be *along* the highlands which divide the rivers designated by the treaty.

According to Great Britain, it is *from another point*, 120 miles distant, that the boundary line is *along* the said dividing highlands: and, *from* Mars' Hill, which she declares to be the North-west Angle of Nova Scotia, the said boundary line, instead of being along the highlands, which divide the rivers designated by the treaty, is avowedly along other highlands, dividing other rivers, and connected, at the distance of 120 miles, with the highlands designated by that instrument.

In describing a boundary line, there are three requisites; the point at which it begins, that at which it terminates, and the course or direction which it follows between those two points. The most appropriate words, those in most common use for that purpose, are, *from*, *to*, and *along*, or *by*: *from* the point at which the line begins; *to* the point at which it terminates; *along* the direction, or *by* the course which it follows.

The word *from*, both from its etymology and uniform use when applied to place, is that which most precisely designates *beginning*, and excludes any possible interval, between the point to which it refers, and that where the course or direction assigned to the line, does begin. The word *along*, as applied to such course or direction, means *the whole length*, *following the course of*, *keeping company with*, means nothing else, and is never used in any other sense.

The treaty having declared the boundary, *from* the North-west Angle of Nova Scotia, *to* the North-westernmost head of Connecticut River, to be *along* the highlands which divide the rivers, &c. that boundary cannot, without a direct violation of the express terms of the treaty, leave the said highlands, at any place, or for any distance, between that angle and that head: it must, through its whole length, between those two points, keep company with and follow the course of those highlands.

What precludes any cavil respecting the obvious meaning of those emphatic words in the treaty, is, that there was, in that respect, a defect in the public acts of Great Britain, from which the description of the line was borrowed; and that that defect was corrected by the framers of the treaty, who placed, in most explicit terms, the beginning and the termination of the boundary line, on the actual dividing highlands.

According to the Proclamation of 1763, the line, crossing the River St. Lawrence and the Lake Champlain in 45 degrees of North latitude, *passes along* the highlands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the sea, *and also along* the North coast of the Bay des Chaleurs, &c.

This description is vague, inasmuch as it does not prescribe the manner in which the line is to pass from the highlands to the North coast of the Bay des Chaleurs. There is a chasm, in the description, between the highlands and that coast: but, though

defective in that respect, the expressions used in the Proclamation do not contradict the description. Terms of the Treaty.

The subsequent Act of Parliament of the year 1774, declared the Province of Quebec to be "bounded on the South, by a line *from* the Bay of Chaleurs, *along* the highlands which divide the rivers (last above mentioned,) *to* a point in 45 degrees of Northern latitude on the Eastern bank of the River Connecticut."

This description was not merely vague, but inaccurate. The same chasm, as in the Proclamation, was left between the extremity of the Bay of Chaleurs and the dividing highlands; and there was besides another, between those highlands and the point in 45 degrees of Northern latitude on the Eastern bank of the River Connecticut. The use of the words *from* and *to* was therefore inappropriate.

But the framers of the treaty of 1783, discussing the terms of an international compact, with the avowed view that all disputes which might arise in future on the subject of the boundaries might be prevented, corrected the defects of the former description, and used no expressions but such as were strictly applicable to the boundary agreed on, and described in the treaty.

The manner in which the line necessary to connect the dividing highlands with the Bay des Chaleurs ought to have been described, was foreign to the subject matter of the treaty; since that particular portion of the Southern boundary of the Province of Quebec lay far East of the territories of the United States, and made no part of their boundary as agreed on by the treaty. It was a boundary only between Canada and Nova Scotia; it belonged to Great Britain alone to determine what had there been left indefinite by the Quebec Act: and it has already been observed, that when an allusion is made in the British Statement, to the uncertainty which still prevails respecting the boundaries between those two Provinces, the remark applies exclusively to that part of their boundary, and not at all to any portion which can affect the boundaries of the United States, and the question now under discussion.

The point from which, by the Quebec Act, the line along the highlands was to commence, was not on the highlands; and the word *from* was therefore inapplicable. But the framers of the treaty placed, in the most precise and express terms, the point at which the line along the highlands was to commence, that is to say, the North-west angle of Nova Scotia, on the actual dividing highlands; and to that point, therefore, the word *from* was strictly applicable, and the appropriate one to be used on the occasion. It is only, in case they had not thus expressly placed the North-west angle of Nova Scotia, or place of beginning, on the dividing highlands, that it might have been alleged, that the words *from*, *along*, and *to*, did not imply the necessity of the boundary line being, through its whole extent, along the highlands which divide the rivers designated by the treaty.

Thus, in a public Act, designating a boundary line as extending *from* Stutgard along the Rhine, *to* Cologne, the description would be defective, and the word *from* improperly used, since Stutgard is not on the Rhine; and it would be absurd thence to argue that in another public Act declaring the boundary to be *from* Basil, *along* the Rhine *to* Cologne, it might from Basil, for one half of the distance *to* Cologne, pursue another direction than *along* the Rhine.

But the care with which, whilst adopting the point in 45° North latitude on the bank of the Connecticut River, the framers of the treaty corrected, in that part of the boundary, the defective description of the Quebec Act, affords the most conclusive proof of the deliberate attention which they paid to the subject, and that the words *from*, *along*, and *to*, were not inadvertently introduced; since, fully aware of their import, the negotiators altered the description of the boundary, so as to make it exactly correspond with the true and only appropriate meaning of those words.

Terms of the Treaty.

It has already been observed that the correction consisted in placing the termination of the line which extends along the highlands, at that point where the boundary must necessarily leave them, that is to say, at the source of the Connecticut River; and in describing as another line, that which from that source extends "down along the middle of that river to the 45th degree of North latitude."

Another conclusive proof of the meaning of the words *from*, *along*, and *to*, as used in this article of the treaty, with reference to the beginning, course, and termination of the boundary, is found in the subsequent parts of the same article, in which they are used for the same purpose, and in the same express sense, not less than eight times, viz:—

"To the North-westernmost head of Connecticut River, *thence* down *along* the middle of that river *to* the 45th degree of North latitude."

"The River Iroquois, or Cataraquy; *thence along* the middle of said river *into* Lake Ontario."

"The communication by water between that lake and Lake Erie; *thence along* the middle of said communication *into* Lake Erie."

"The water communication between that lake and Lake Huron; *thence along* the middle of said water communication *into* the Lake Huron."

"The River Mississippi; *thence* by a line to be drawn *along* the middle of the said River Mississippi, *until* it shall intersect the Northernmost part of the 31st degree of North latitude."

"The River Appalachicola or Catahouche; *thence along* the middle thereof *to* its junction with the Flint River."

"St. Mary's River; and *thence* down *along* the middle of St. Mary's River *to* the Atlantic Ocean."

"East, by a line to be drawn *along* the middle of the River St. Croix, *from* its mouth in the Bay of Fundy *to* its source."

In this last instance, the words *from* and *along* are used; in the others, the words are *thence* and *along*. The mode of reasoning generally adopted by the British Agents, under the late Commission, renders it perhaps necessary to observe, that the word *thence*, as applied to place, means *from that place, from that point;* and that, therefore, the words *from a certain point*, and *thence*, as applied to a point just before mentioned, are synonymous.

It will not be denied that, in every one of the instances which have been quoted, the boundary line was to extend without chasm or interruption, *from* the point of departure, *along* the defined river or water communication, *to* some other specified point or place. Thus, in the last instance, the line does begin at the mouth of the River St. Croix, and *from* that point extends without any interruption, *along* the middle of the said river *to* its source. It is the same in all the other instances. And, in like manner, the boundary line beginning at the North-west angle of Nova Scotia, must, according to the treaty, *from that point* extend without any interruption, *along* the highlands which divide the rivers designated by the treaty, *to* the North-westernmost head of Connecticut River. To deny this would not be less repugnant to common sense, than if it was asserted that the Eastern boundary, instead of keeping, through its whole extent, *from* the mouth of the River St. Croix, *to* its source, *along* the middle of that river, might, in conformity with the treaty, have been a straight line, *from* the mouth of the river to the junction of its North and West branches.

The extraordinary manner, in which the British Agent, under the late commission, attempted to evade that express provision, affords another proof of the impossibility of reconciling the pretension of Great Britain with the terms of the treaty. He has simply proposed to alter the expressions used in the treaty, and he has suggested several ways of doing it.

1. The words used in the treaty, viz: "North to the highlands" are, he says, "evidently to be understood as intending that the North line should terminate whenever it reached the highlands, which, *in any part of their extent*, divide the waters mentioned in the treaty." (*l*) Terms of the Treaty.

2. What he calls the intention of the treaty, will, he says, "be literally effectuated by a very small *variation* of the expression actually made use of in this regard, namely, by describing the second line forming this angle in the following words, that is to say; along the said highlands *where they* divide those rivers, &c. the expression actually made use of is, along the said highlands *which* divide those rivers." (*m*)

3. "The true intention of the treaty . . . . . would clearly be ascertained by the following obviously plain and natural, and *nearly literal, construction* of its phraseology, namely ;—It is hereby agreed and declared that the following are and shall be the boundaries of the United States, viz : from the North-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of St. Croix River to *the line of* the highlands, along the said highlands which divide," &c. (*n*)

4. Finally, the Agent proposes to reverse the description of the boundary. "Let then the tracing of the boundary in this qnarter be made, from the North-westernmost head of Connecticut River, *along the highlands* which divide those rivers, &c. to the North-west Angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of St. Croix River to the highlands." (*o*)

In this last version, the British Agent has not interpolated new words, but besides reversing the line, he has omitted the word *said*, which identifies the highlands which divide the rivers, &c. with those to which the due North line is declared to extend.

It is not necessary to inquire whether the alterations thus suggested would answer the purpose for which they are intended. They have been adverted to, only to shew the various attempts of the British Agent, all of which consist in an actual alteration of the expressions of the treaty.

But even his ingenuity was at fault, with respect to "the words descriptive of the Eastern boundary of the United States;" and he says: "These words, taken in their *literal* and *individual signification*, would involve a construction altogether inconsistent with other parts of the treaty, *and with facts at the time within the knowledge of the framers of it*, and if the foregoing observations upon the first description of this part of the boundary, be, as they are presumed to be, correct, these words descriptive of the Eastern boundary, must, of necessity *be interpreted in a corresponding sense.*"

What that intended interpretation should be, the British Agent does not state. But as those descriptive words, viz: "a line to be drawn . . . . . from *the* source (of the River St. Croix) directly North to the aforesaid highlands which divide the rivers, &c. are susceptible of no other construction but that "literal and individual signification" to which he objects, and as he had no other object, but that of placing the termination of the due North line at another point than on the aforesaid dividing highlands, it is clear that his construction consists in striking off the obnoxious clause altogether.

The British Commissioner states the claim laid before the board, on the part of His Britannic Majesty, in the following words, viz:—"That the North-west angle of Nova Scotia should be . . . . . formed by the intersection

(*l*) British Agent's First Memorial. Written Evidence, No. 55.
(*m*) British Agent's Supplementary Argument. Written Evidence, No. 55.,
(*n*) British Agent's Reply. Written Evidence, No. 55.
(*o*) Written Evidence, No. 55.

Terms of the Treaty.

of a line drawn due North from the source of the River St. Croix, with a line running from the North-westernmost head of Connecticut River, along the highlands . . . . . which divide the rivers Chaudiere and De Loup, falling into the River St. Lawrence, from the rivers Androscoggin, Kennebec and Penobscot, falling into the Atlantic Ocean; *such line being continued along the highlands in that quarter, in such manner* as to leave all the sources of all the branches of the said Rivers Androscoggin, Kennebec and Penobscot, South of such line, and within the territories of the United States, until it meets the said line drawn due North from the source of the River St. Croix, at or near Mars' Hill." (*p*)

This is an explicit commentary on the third version of the British Agent. The line is reversed, and, where it leaves the highlands prescribed by the treaty, it is *to be continued* along other highlands which *do not divide* rivers falling into the Atlantic Ocean, from those which empty themselves into the River St. Lawrence.

The British Commissioner decides in favor of the British pretension, and sustains his decision in the following words—viz: "It is obvious that the order of description in the treaty of 1783, was reversed from the proclamation, its prototype; and hence arises the error of the agent on the part of the United States, who contends that the due North line from the source of the River St. Croix is to be extended until it arrives at Highlands which divide the Rivers," &c. &c. &c.

"But this is not the fact, the words of the treaty are,—due North from the source of the St. Croix River to the highlands, along the said highlands which divide those rivers," &c. &c. &c.

"Now what does the word 'along,' in its ordinary signification import? Certainly a *continuation* of those highlands, in which continuation will be found highlands which divide the rivers, &c. &c. &c. Indeed the word *along*, used in the treaty of 1783, is, in this instance, synonymous with the word *passing*, in the proclamation."(*q*)

We have not been fortunate enough to comprehend clearly this reasoning. The word *passing* is not used alone, or instead of *along*, in the proclamation: the words there, are, that the line *passes along*. According to the Commissioner, the word *along* is synonymous both with *passing* and *continuation;* which two last words are of course also synonymous: and what he would gain, by substituting the word *passing* or *passing along*, to the word *along*, is not perceived.

But, that *along*, in its ordinary signification, or in any case whatever, imports, or ever has been used in the same sense as *continuation*, cannot be seriously asserted. What the British Commissioner intends, is, under color of affixing to that word a sense which it never had, to suggest the insertion of the word *continuation*. And the article would then read "due North from the River St. Croix, to *the continuation of* the highlands, along the said *continuation of the* highlands which divide the rivers," &c.

Instead of the words "continuation of," the suggestion in the British Statement is in reality to insert the words "which connect themselves with:" so that the article would read, "along the said highlands *which connect themselves* with the highlands which divide the Rivers," &c. But care has been taken not to bring that interpolation in full view, by avoiding any such discussion of the terms of the treaty as had been hazarded by the former British Commissioner: and the argument proceeds as if the essential condition of dividing from each other the rivers therein described, in reference both to the North-west angle of Nova Scotia, and to the boundary line along the Highlands, made no part of the treaty.

(*p*) Written Evidence, No. 53. p. 371.
(*q*) Written Evidence, No. 53, p. 375, 376.

But without even adverting to the unmanageable description of the Eastern boundary, whichsoever of those various readings may be selected; Terms of the Treaty.

Whether to interpolate somewhere the words "*such line being continued along the highlands in that quarter;*"

Or, to reverse the description and to omit the word "*said:*"

Or, to insert instead of the words "to the highlands," either "*to the line of*" or "*to the continuation of* the highlands;"

Or, to substitute to the words "highlands which divide," either "highlands *to the place where they* divide," or "highlands *which connect themselves with highlands* which divide," or "highlands which *in their Westwardly course* divide," or, "highlands which *in any part of their extent* divide;"

Or, to suggest whatever other mode ingenuity may devise; it is clear, that highlands which do not divide certain specified rivers, though on the line of, in continuation of, or connected with, are not *the* highlands which divide those rivers.

With leave thus to alter in some way or another the terms of a treaty, it may be bent to any construction whatever. And it is hardly necessary to observe, that interpolations, omissions, or alterations in its expressions, are not an interpretation of a treaty, but the substitution of other provisions to those prescribed by the instrument.

The assertion that the British line does actually divide the rivers designated by the treaty, is also founded on a glaring perversion of the meaning of the term "to divide."

It will be seen, by the map A, that the boundary line, claimed by Great Britain, from Mars' Hill to the sources of the Chaudiere, divides, through nearly its whole extent, the sources of the Penobscot River from those of the Southern tributary streams of the River St. John. And it is declared, in the concluding paragraph of the first branch of the British Statement, that Great Britain claims that, from Mars' Hill, "the line of boundary of the United States be traced South of the River St. John to the Northwesternmost head of Connecticut River, at the heads of the Rivers *Penobscot*, Kennebec, and Androscoggin, which rivers Great Britain maintains to be those intended by the Treaty, as the rivers falling into the Atlantic Ocean, which are *to be divided from those which empty themselves into the River St. Lawrence.*"

Was it by this intended to assert, that a line, which, for a distance of one hundred miles, divides the sources of the Penobscot from those of the St. John, is a line which divides the sources of the Penobscot from those of rivers which empty themselves into the River St. Lawrence?

The British Commissioner declares it also to be evident, "that *the line* extending thence (from Mars' Hill) along the highlands, in a Westerly direction, *described by the red line* on the general map made by his Majesty's Principal Surveyor, (*r*) (being the same, as the red line on map A, claimed on the part of Great Britain) *does divide*, as directed in and by both those treaties (that of 1783 and that of Ghent,) *the rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean;* thus in every particular *satisfying the words* of the above named treaties, and corresponding," &c. (*s*)

It seems to have been intended, by that paragraph of the British Statement, and by that *dictum* of the British Commissioner, to assert, that a line along the sources of the Penobscot, in its origin at Mars' Hill, 100 miles distant from any of the rivers that empty themselves into the River St. Lawrence, and which, at its termination only, reaches the highlands in which any of those tributary rivers have their sources, does,

(*r*) The map here alluded to, not having been admitted to be filed by the Board of Commissioners, has not been adduced in evidence.

(*s*) Written Evidence, No. 53, p. 372

Terms of the Treaty. through its whole extent, actually divide the upper branches of the Penobscot from the rivers that fall into the River St. Lawrence.

The term "*to divide*" is there made synonymous with that "*to lie between.*"

Whatever does divide, (or separate) must be contiguous to both the things which are to be divided, (or separated) one from the other.

A line can divide no other territories, (or surfaces,) from each other, but such as are contiguous one to the other. If not contiguous, they are divided, not by a line, but by the intervening territory (or surface.)

In this instance, the rivers which empty themselves into the River St. Lawrence are divided from the sources of the upper branches of the Penobscot, 1st. by the highlands which divide the first mentioned rivers from the Northern tributary streams of the St. John; 2dly, by the entire basin of the River St. John; 3dly, by the highlands which divide the Southern tributary streams of this river from the upper branches of the Penobscot.

These last mentioned highlands, which are those claimed by Great Britain as the boundary line, divide no other rivers from each other, but those of the Penobscot and of the St. John. They divide the rivers that fall into the Atlantic Ocean from those which empty into the River St. Lawrence, in the same manner precisely, as the Thames divides Surrey from Suffolk, and as the Rhine divides France from Poland. Yet that assertion, if it was so intended, is the only attempt which has been made, in the British Statement, to reconcile the pretension of Great Britain with the terms of the Treaty.

It has been our intention, in this section, to reduce the question to its simplest terms, by shewing that the line claimed by Great Britain, as the boundary between her dominions and those of the United States, is wholly irreconcilable with the express provisions of the treaty.

It is not deemed necessary to advert again to the impossibility, that Mars' Hill, considering its position in relation to the Western extremity of the Bay des Chaleurs, should be the North-west angle of Nova Scotia. But it is proper to repeat, that the description in the treaty, of highlands dividing certain specified rivers, applies, not only to the boundary between the United States and Great Britain, but also to that portion of the Northern boundary of Nova Scotia, which, extending Eastwardly from the summit of the angle, does, according to the treaty, form the North-west angle of Nova Scotia. It is preposterous to say, that a line described as dividing rivers from each other, may intersect the largest river in the Province, and that the bed of that river may, in any sense of the word, be deemed "highlands." And a mere inspection of Map A, or of Mitchell's Map, is sufficient to shew that no line can be drawn from Mars' Hill, in an Eastwardly or North-eastwardly direction, which will not, within less than ten miles, intersect the River St. John and sink to its level.

§ 9.

INTENTIONS OF THE FRAMERS OF THE TREATY OF 1783.

Intentions.—The terms of the treaty were too explicit to admit the supposition that they conveyed a meaning different from that intended by the negotiators. The attempt, to appeal from those terms to intentions gratuitously ascribed to those Ministers, has accordingly failed altogether.

The broad assertion, (*t*) that they intended to assign to each Power the whole of the rivers which had their mouths in their Territories, respectively, has not only been

(*t*) British Statement, page 10 and passim.

shewn to be unsupported by any proof or evidence whatever to that effect: but it has been decisively refuted by the general tenor of the treaty, through the whole of which there is a constant departure from that pretended "main object" of the negotiators. Intentions.

It has likewise been conclusively shewn that they did not, in order to effect that purpose, instead of defining the boundary along the highlands in terms corresponding with that presumed intention, resort to the singular mode of describing the River St. Croix as having its mouth in the Bay of Fundy, (*u*) and of designating, in another clause, the Gulf of St. Lawrence by its specific name: there being in both instances sufficient reasons for those specific designations, which intended, where used, for a particular purpose, were wholly inapplicable to the clause in which that boundary was described, and could not affect the obvious and incontrovertible sense of the terms used in the description.

The vague and indeterminate meaning of the term "highlands," when used alone, gave an opportunity for attempting to perplex the subject. (*v*) To try to ascertain the import of a word in a particular sentence, by considering it apart from expressions which are there its inseparable adjunct, must necessarily lead to an erroneous result. But it has also been decisively shewn, that the framers of the treaty had not a "generally mountainous country" in view, and that the term "highlands," either in its general sense, or in that which has been consecrated by local usage, was the most appropriate which could have been selected, for the purpose of designating, without reference to its absolute elevation, any ground which divides rivers from each other.

The inferences attempted to be deduced, from the proposal on the part of America, to make the River St. John the boundary, from the Canadian origin of the Fief of Madawaska, and from the incongruous acts or attempts of the British Provinces, do not, it is believed, require any notice. (*w*)

There was no necessity, on the part of the United States, to resort to the intentions of the framers of the treaty. Yet they have been anxious to shew that their reliance was not exclusively on the letter of that instrument, that the expressions used in describing the boundary were not carelessly and inadvertently adopted, and that the boundary claimed by them, was that which alone could, at the time, have been intended by the parties to the treaty.

With that object in view, it was proved, in the First American Statement, that the true intention of the two Powers was, to confirm the boundaries designated in the Charter of Massachusetts' Bay, as defined on the East by the Commissions of the Governors of Nova Scotia, and as modified towards the North by the Proclamation of 1763, and by the Quebec Act of 1774.

The Charter of Massachusetts' Bay, the antecedent Public Acts of Great Britain, and the subsequent Documents, prior to the Proclamation of 1763, have been adduced principally for the purpose of shewing the coherence and connexion of the title, and that, notwithstanding some efforts made to encroach on the Chartered Boundaries of Massachusetts' Bay along the sea coast, that Colony had, from the time when Nova Scotia was separated from it till the year 1763, continued to be bounded on the East by the Western boundary of Nova Scotia, and on the North by the River St. Lawrence.

It must, at the same time, be distinctly understood, that there is no intention to discuss, if at all controverted, any abstract question of right, which may have been incidentally referred to, as making part of the history of the case.

(*u*) British Statement, page 34. Summary of Arguments, 1st Argument.
(*v*) Do. do. 5th Argument.
(*w*) Do. do. 2d, 3d, & 4th Arguments.

Intentions.

Whether there was a power in the King to alter the Charter, or wherever that power might be vested, it is now of no importance to examine. And, although the Charter of Massachusetts was undoubtedly the basis on which the United States negotiated, it was only necessary to prove, that the two Powers did by the treaty adopt, as the boundaries between their dominions in that quarter, those limits which, as early as the year 1763, had been designated by the Public Acts of Great Britain, and continued at the date of the treaty, to be the Western boundary of Nova Scotia and the Southern boundary of Canada.

This fact has been so conclusively demonstrated in the First American Statement, that it is not presumed that it will be controverted.

The separate and secret article, annexed to the Provisional Articles of November, 1782, might have also been adduced, as a further proof of the adherence to the provincial limits previously established by Great Britain, which characterizes the treaty. The boundaries of West Florida had, since the Proclamation of 1763, been enlarged, as will appear by the commissions of Governors Chester and Elliot, (*x*) by extending its Northern limit as far North as the latitude of the mouth of the River Yazoo, from the Mississippi to the River Appalachicola. It is agreed by the Separate Article, that that parallel of latitude should be the boundary between that Province and the United States, "in case Great Britain, at the conclusion of the present war, shall recover or be put in possession of West Florida." (*y*) That Province was by the definitive treaty ceded by Great Britain to Spain: its fate was uncertain in November, 1782, when the Provisional Articles were agreed on between Great Britain and the United States.

This separate article, extremely inconvenient in itself, and which must have proved particularly offensive to Spain, was acceded to with great reluctance by the American Commissioners, and, contrary to their instructions, kept secret from the French Government. The British Commissioner produced the commission of Governor Johnson, (*z*) extending the bounds of West Florida as above mentioned, and contended for that extent as a matter of right. And the principal reason which induced the American Commissioners to agree to it, is a complete answer to the pretended impossibility, suggested in the British Statement, that Great Britain ever could have acceded to the North-eastern Boundary as now claimed by the United States. In their letter to their Government, of July, 1783, they say: "Mr. Oswald adhered strongly to that object. . . . . And among other arguments, he finally urged his being willing to yield to our demands *to the East*, North, and West, as a further reason for our gratifying him on the point in question." (*a*)

The silence preserved, in the British Statement, with respect to Public Acts so well known, and so immediately connected with the question, and the suggestions concerning the North-west Angle of Nova Scotia, render it however proper to repeat in substance the decisive facts already adduced, which, independent of any other consideration, prove beyond doubt the identity of the boundary lines prescribed by the above mentioned acts, with those declared and agreed on by the treaty of 1783.

By the Commissions of all the Governors of Nova Scotia, from the year 1763 to that of the 29th July, 1782, issued to John Parr, who was the Governor at the date of the Provisional Articles of Peace, of November, 1782, and of the definitive treaty of September, 1783, that Province was declared, to be bounded on the Westward, "by a line drawn from Cape Sable across the entrance *of the Bay of Fundy to the mouth*

(*x*) Written Evidence, No. 32.
(*y*) Written Evidence, No. 33.
(*z*) Quoted in Commission to John Elliot, Written Evidence, No. 34
(*a*) Written Evidence, No. 9. (*a*)

of the River St. Croix, by the said river to its source, and by a line drawn due North from thence, to the Southern boundary of our Colony of Quebec; and, to the Northward, by the said boundary, so far as the Western extremity of the Bay des Chaleurs." (*b*) Intentions.

By the Commissions of the Governors of the Province of Quebec, from 1763 to 1774, the *Southern boundary* of that Province was described as a line which, "crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of northern latitude, *passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the North Coast of the Bay des Chaleurs.*" And in the Commissions of Governor Carleton, of 27th December, 1774, and of that granted, on the 18th of September, 1777, to Frederick Haldimand, who was still Governor in November, 1782, and September, 1783, the said Province is, in conformity with the Quebec Act of 1774, declared to be "*bounded on the South, by a line from the Bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in 45 degrees in Northern latitude, on the Eastern bank of the River Connecticut.*" (*c*)

The North-west angle of Nova Scotia had thus been determined in express terms, for the twenty next preceding years, and continued to be, at the date of the treaty of peace, at the intersection of a line drawn due North from the source of the River St. Croix, and of the dividing highlands abovementioned.

The said angle is accordingly in the treaty of 1783 referred to, as a point already determined: it is, as such, made the point of departure in the description of the boundaries of the United States: and the two lines by which it is declared to be formed are those which, by those previous public acts of Great Britain, had been respectively prescribed, and then continued to be the Western boundary of Nova Scotia and the Southern boundary of the Province of Quebec.

That identity of the North-west angle of Nova Scotia, as previously established by the British Government, with the North-west angle described by the treaty of 1783, has heretofore been contended for, in the most strenuous manner, by Great Britain. Referring, in proof, to the several extracts from the arguments of the British Agent, before the Commissioners under the 5th Article of the Treaty of 1794, (*d*) we will only quote his concluding words. "If we now compare this angle with the North-west angle of Nova Scotia described in the treaty of Peace, ... can it be believed, ... that . . . . . so exact a coincidence could have happened between the actual, real boundaries of the Province of Nova Scotia, and the boundaries of it described in this treaty, if the latter had not been dictated and regulated by the former?"

The British Commissioner under the late commission, though attempting to draw another inference, acknowledges also, that the words "highlands, which divide," &c. used in the treaty, were taken from the Proclamation of 1763, and that the proclamation was the prototype of the treaty. (*e*)

The Southern boundary of the Province of Quebec was, at the date of the treaty, according to the previous public acts of Great Britain, the Northern boundary both of Nova Scotia and of New England. In defining the boundary between Great Britain and the United States, the North-west angle of Nova Scotia became of course the point of departure along the highlands, instead of the Western extremity of the Bay des

(*b*) Written Evidence, No 15.
(*c*) Written Evidence, No. 21.
(*d*) Written Evidence, No. 35.
(*e*) Written Evidence, No. 53, page 373

Intentions. Chaleurs; and the correction in the Westerly termination of that line on the River Connecticut has already been adverted to. In other respects, the line along the highlands is described in the same terms, in all the previous public acts of Great Britain, and in the treaty, with no other alteration than the substitution of the words "Atlantic Ocean," to the word "Sea."

The term "Atlantic Ocean" is more appropriate in this case than that of "Sea," but, as applied to the American shores, both have the same meaning.

It has been demonstrated, by reference to various public acts emanating from Great Britain, that the term "Atlantic Ocean," in its general and usual acceptation, embraces, as well as that "Sea," the Bay of Fundy and the Gulf of St. Lawrence: and this is the only important point in the discussion.

It has been shewn that that term, in the Commissions of the Governors of the British Provinces, subsequent to 1783, and the term "Sea," in the similar documents of a date prior to that year, are used, and must necessarily be understood, in the same sense.

Those two terms are used as synonymous, by the British Agent, in a passage of the argument which has just now been referred to, viz: rivers "which fall into the *Sea* or *Atlantic Ocean;*" (*f*) by the Lieutenant Governor of New Brunswick, (T. Carleton) who, when referring to the Quebec Act, where the word *Sea* is used, uses the words *Atlantic Ocean;* (*g*) and in the Proclamation of 1763 itself, as has already been shewn in the First American Statement. (*h*)

It may, with great propriety, be added, that admitting the highlands described in the Proclamation of 1763, and the Quebec Act of 1774 to be identic with those now claimed by the United States, had it been the intention of the treaty of 1783 to substitute other highlands, one hundred miles further South, and not dividing from any other rivers those that fall into the River St. Lawrence, it is preposterous to suppose that the mode resorted to, for effecting that purpose, would have been simply to substitute the term "Atlantic Ocean" to the term "Sea."

From this identity of the Northern boundary line of the United States, with the Southern boundary of the Province of Quebec, important inferences are deduced, which leave no doubt as to the true intentions of the parties.

The line prescribed by the treaty, was a confirmation of that established in 1763, at which time the natural object must have been, to assign to the new Province that portion of territory, till then claimed by Great Britain, as part of the provinces of Massachusetts' Bay and Nova Scotia, which lies on the South side of the River St. Lawrence, and is watered by its tributary streams. The object could not have been, at that time, when Massachusetts was part of the British dominions, to secure, without passing through it, a direct communication between Quebec and Nova Scotia. And this again affords a peremptory answer to the observation in the British Statement, that it is incredible that Great Britain should have "consented to *place* the United States in entire possession of the only practicable line of communication between her two Provinces."

As the Bay of Fundy is not mentioned in either the Proclamation of 1763, or the Quebec Act of 1774, there is not even a pretence, on the ground assumed on the part of Great Britain, that the River St. John was, in those public acts, excepted from the rivers falling into the sea, intended to be divided by the highlands from those which fall into the River St. Lawrence. And such an exception, therefore, could not have been intended by the framers of the treaty of 1783, who did not define a new line,

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(*f*) Written Evidence, No. 33, page 271.
(*g*) Written Evidence, No. 59, and British Evidence, No. 32.
(*h*) Written Evidence, No. 17, page 167.

but only confirmed and established the boundary already designated by the Proclamation and the Quebec Act. Intention

The mention made of the Bay des Chaleurs in the public acts of 1763 and 1774, and of its Western extremity, in the Commissions of the Governors of Nova Scotia, as being the Eastern extremity of the Southern boundary of the Province of Quebec, determines beyond doubt the position and course of the dividing highlands, which form that boundary. And the situation of the Western extremity of the Bay des Chaleurs, as laid down in Mitchell's Map, determines also that of the North-west angle of Nova Scotia on the North side of the River St. John, since it renders it mathematically impossible that that angle should be at any point, South of that river, of the line drawn due North from the source of the River St. Croix.

The description of the dividing highlands is, in those acts of the British Government, as well as in the treaty of 1783, expressed in terms so clear, that, at a time when there was no motive for distorting their natural meaning, there was no doubt on the subject; and they uniformly received that construction of which alone they are susceptible.

In all the maps, accordingly, published in Great Britain, between the years 1763 and 1783, on which the Southern boundary of the Province of Quebec is laid down, the North-west angle of Nova Scotia is placed at a point on the North line from the source of the River St. Croix, North of the River St. John; and the Southern boundary of that Province, from that point to the Connecticut River (*i*) divides the rivers that fall into the River St. Lawrence from the tributary streams of the River St. John, and from the other rivers that fall into the Atlantic Ocean.

Several observations in the British Statement, and those in No. 44 of the Appendix, render it necessary to give some further explanations of the inferences which may be drawn from that universal understanding, with respect to the intentions of the framers of the treaty of 1783.

Since Mitchell's Map is declared, by the convention of 1827, and must be held as conclusive evidence of the topography of the country, as understood by the negotiators in 1783, other maps, though of a subsequent date, cannot be adduced as evidence of the intentions of those negotiators, in opposition to the topographical features of the country as laid down in that map; and those in question are not brought forward, even for the purpose of illustrating any feature whatever of the topography of the country.

Greenleaf's Statistical Account a' map, and Pownall's Topographical Description, have been resorted to, on the part of Great Britain, for the express purpose of throwing light on an important topographical feature, viz: "the intended highlands." Hale's map has also been offered, to elucidate the position of a certain grant of land, in order thereby to prove that, in the year 1789, the Lake branch of the River Connecticut was acknowledged by the State of New Hampshire to be "the Connecticut River."

It is for a purpose similar to this last instance that the above mentioned maps have been produced. The boundary of the Province of Quebec, defined for the first time in 1763, could not be delineated on a map published in 1755. A boundary line, designated by a public act, is not a topographical feature of the country; and the maps in question are adduced only in order to shew what had been, between the years 1763 and 1783, the general understanding respecting the position, in reference to the rivers as they are laid down in Mitchell's Map, of a boundary established subsequent to the date of that map. For that purpose they are clearly admissible, in conformity with the convention of 1827; and it will not be denied, that, in the total absence of any

(*i*) There may be, in some of those maps, occasional and trifling discrepancies, evidently errors of the copier or engraver, which do not affect their general scope.

Intentions.

evidence whatever to the contrary, they are a conclusive proof of the universal understanding on that point, at least of the geographers and of the American negotiators, who, it is proved, did consult some of those maps.

The inferences to be thence deduced may, if she thinks it proper, be controverted on the part of Great Britain. They are submitted as necessarily flowing from the undeniable fact, that all the above mentioned maps coincide with respect to the position of the North-west angle of Nova Scotia, and of the Southern boundary of the Province of Quebec.

It has been asserted in the First American Statement, and it is now repeated, 1st, that it is morally impossible that the British Government and negotiators should have been unacquainted with all the maps of America published during the twenty next preceding years, and ignorant of their universal coincidence on the subject of the boundary in question; 2dly, that thus knowing the manner in which the boundary defined by the Proclamation of 1763 was understood, it is equally impossible to suppose that they should, in the description of the boundary contemplated by the treaty, have adopted precisely the same terms which had been used in the Proclamation and the Quebec Act, had it been their intention to designate a boundary essentially different from that so universally understood as having been intended by those public acts of Great Britain.

But if, after having adduced maps in support of the British claim, it has been found expedient, on discovering the uniform tenor of those produced by the United States, peremptorily to declare that "Great Britain altogether denies the authority of maps as proof in a case of contested limits," (*k*) she cannot reject the authority of that of Mitchell, by which the framers of the treaty are acknowledged, by the convention of 1827, to have regulated their joint and official proceedings. This was the only map, published in England prior to the treaty, which had an official character. It appears, from the certificate on the face of it, to have been undertaken with the approbation and at the request of the Board of Trade, and to have been chiefly composed from official documents in that office: for which reason, it was probably selected in preference to others of more modern date. (*l*) It is not in any respect, now that the question respecting the true St. Croix has been decided, more favorable to the American claim than any other. But, if it be recollected that it has been asserted, in the British Statement, "that the extreme obscurity and confusion," &c. in relation to the boundaries, "added to the very *imperfect topographical knowledge then had* of the interior of the country, ... rendered it *absolutely impossible* for the framers of the treaty of 1783" to lay down "the several points and lines of the boundary with" sufficient accuracy; the vast advantage will immediately be perceived of having at least one map, mutually acknowledged to be conclusive evidence of the topography of the country, as it was understood by the framers of the treaty, and by which, comparing it with the terms of that instrument, the true intentions of those ministers may be ascertained; and to this map alone, independent of any subsequently published, and even setting aside every other evidence that may elucidate the subject, we will now appeal, as the proper test of those intentions.

The boundaries of Nova Scotia and of New England are, on that map, extended to the North as far as the River St. Lawrence; and a line drawn due North to that river, from the source of the River St. Croix, is distinctly delineated as the boundary between Nova Scotia and New England, under which last denomination are included the old Province of Main, and Sagadahoc, or the territory lying between that Province and Nova Scotia. This has already been adduced as one of the proofs

(*k*) British Appendix, No. 44.

(*l*) It is in proof that the map was, for the purposes of the treaty, *brought* from England by the Commissioners.—Written Evidence, No. 23

of the manner in which the chartered boundaries of Massachusetts' Bay, were, prior to the cession of Canada, understood by Great Britain; of her total disregard of the French claims South of the St. Lawrence, and of the consequent irrelevancy of the Canadian origin of the Fief of Madawaska to any question of boundary between her and the United States. Intentions

With respect to the intentions of the framers of the treaty, this map has also enabled us to shew:

1st. That it was known to them that the due North line must, within a short distance from the source of the River St. Croix, cross branches of the River St. John, and leave within the United States the territory West of the said line, which is watered by those branches.

2dly. That the territory which the United States would have gained, if the River St. John had been the boundary line of the two nations, is, according to that map, larger than the territory which they now claim beyond that river.

3dly. That, by the highlands, at which the said due North line was to terminate, they could not have meant any hill, considerable elevation, or mountain, situated South of the River St. John; since there is no trace on the map, on or near that line, of any hill or mountain; and they could not, by any other means within their reach, have known whether any would be found on or near the said North line, South of the River St. John.

4thly. That they could not, by the said highlands, at which the due North line must terminate, have meant a "generally mountainous country;" since no such country is laid down on the map along or within forty miles East or West of the said line; whilst a mountainous country, commencing forty miles West of it, and extending thence Westwardly, is distinctly delineated; and, if it had been intended that the line drawn from the source of the River St. Croix should meet that country, it must necessarily have been defined in the treaty, as a West, and not as a due North line.

But the important fact indisputably established by Mitchell's Map is, that the framers of the treaty had a knowledge of the topography of the country, amply sufficient, whatever their intentions might be with respect to the boundary, to enable them to describe it with great correctness, in reference to the rivers.

The great River St. John, which is the principal feature of the interior and least explored portion of the country, is laid down by Mitchell with considerable accuracy, both as to course and distance, from the place where it is intersected by the due North line, to its Northernmost and Westernmost sources. And the boundaries respectively claimed by the two parties, if traced on his, would not materially differ from those delineated on Map A.

It was, therefore, perfectly well known to the negotiators, that the River St. John penetrated one hundred and twenty miles West of the due North line, and that, for the whole of that distance, the territory watered by that river and its several branches, lay between the sources of the tributary streams of the River St. Lawrence, and those of the Rivers Penobscot and Kennebec; so as to render it absolutely impossible for any line, drawn from any point of the due North line South of the River St. John, to divide for that distance, from any other river whatever, any river emptying itself into the River St. Lawrence.

As it was likewise manifest, by Mitchell's Map, and, therefore, also well known to the framers of the treaty, that any such line drawn, from any point of the due North line, towards the sources of the River Connecticut, must necessarily, through three-fifths of its course, either intersect branches of the River St. John, or divide them at their sources from some other rivers; it is, in the first place, altogether incomprehensible, that, in describing such line, that is to say, the boundary extending from the ter-

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mination of the due North line, along the highlands which divide certain specified rivers, to the source of the Connecticut River; those ministers should have omitted altogether to mention, include, or allude, in any manner, to that river which formed the most conspicuous feature of the country, through or along which that boundary line must pass. For, in the description of that boundary, as defined by the treaty, no other rivers are mentioned, or alluded to, but those which empty themselves into the River St. Lawrence, and those which fall into the Atlantic Ocean. The framers of the treaty were informed by Mitchell's Map, that the River St. John did not empty itself into the River St. Lawrence; and, according to the British hypothesis, it is not in the treaty, and it was not intended by the negotiators, as one of those included under the description of "Rivers that fall into the Atlantic Ocean."

But it is asserted by Great Britain, that it was the intention of the parties to the treaty of 1783, that the point designated in it, as the North-west angle of Nova Scotia; that is to say, the point at which the line drawn due North from the source of the River St. Croix meets the intended highlands and terminates, should be found to the South of the River St. John.

And it was manifest by Mitchell's Map, and therefore perfectly well known to the negotiators, that no point or part of the due North line aforesaid, South of the River St. John, did or could divide, from each other, any rivers whatever, but some branches of the said River St. John.

It is, therefore, contended, on the part of Great Britain, that, intending to designate, as the North-west angle of Nova Scotia, and as the termination of the due North line which forms the Eastern boundary of the United States, some point known to them to divide, from each other, no other rivers than some branches of a river, which falls neither into the River St. Lawrence, nor (according to the hypothesis,) into the Atlantic Ocean; the framers of the treaty did deliberately describe that Eastern boundary, as a line drawn from the source of the River St. Croix, "directly North, *to the* aforesaid *highlands* which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence;" thus defining the termination of that line, or North-west angle of Nova Scotia, by a designation known to them not to apply to the point which they intended to define.

It is again asserted by Great Britain, that the highlands which actually divide the rivers specified by the treaty, and which alone were contemplated as such by the negotiators, are only those which, from the North-westernmost source of the Penobscot, to the North-westernmost source of the Connecticut River, divide the Rivers Penobscot, Kennebec, and Androscoggin, from the Rivers Chaudiere and St. Francis, which empty themselves into the St. Lawrence; and that the boundary line, intended and described by the treaty, does, from the abovementioned point South of the River St. John, on the due North line, extend South of the said river, along the heads of the River Penobscot, to its North-westernmost source, as it is delineated on the Map A.

But it was manifest by Mitchell's Map, and therefore perfectly well known to the negotiators, that the nearest source of the River Chaudiere, was about 120 miles distant, in a straight line, and in a nearly Westerly course, from any point of the due North line; that, through that whole extent, the line would not divide, from any other river whatever, any river that empties itself into the River St. Lawrence; and that it could not, through that whole extent, divide any other rivers from each other, but the Penobscot and the Kennebec from the tributary streams of the River St. John; that is to say, rivers falling into the Atlantic Ocean, from a river falling (according to the hypothesis) into the Bay of Fundy.

It is, therefore, contended on the part of Great Britain, that, intending to designate as the boundary line, from the North-west angle of Nova Scotia to the North-westernmost head of Connecticut River, a line which, passing South of the River St. John,

was known to them to divide, for three-fifths of its extent, no other rivers from each other, than rivers falling into the Atlantic Ocean, from a river falling into the Bay of Fundy; and knowing that the said boundary line would not, at a shorter distance than 120 miles from its commencement, reach the highlands which actually divide the rivers that fall into the Atlantic Ocean from those which empty themselves intothe River St. Lawrence; the framers of the treaty, intending also, as expressly stated, that their description of the boundaries should be such as that all disputes which might arise in future on the subject of the same, might be prevented; did deliberately, and after much contention on the subject, ultimately agree to define the boundary thus intended to be established, in the following words, viz: Intention.

"From the North-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of St. Croix River to the highlands, along the said highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the North-westernmost head of Connecticut River."

That is to say, that, in defining the boundary in question, those ministers described a line which, to their knowledge, divided, for three-fifths of its extent, rivers falling into the Atlantic Ocean from *a river falling into the Bay of Fundy*, as a line dividing rivers falling into the Atlantic Ocean from *rivers emptying themselves into the River St. Lawrence;* thus adopting a description which, to their knowledge, was applicable only to 80 miles out of the 200, along which the said boundary does, and was known by them to extend; and which, to their knowledge, was entirely inapplicable to the 120 miles next to the place of beginning, or to three-fifths of the whole length of that boundary.

This incredible misapplication of language, or indeed gross absurdity, is ascribed to eminent and practical statesmen, some of them not less remarkable for the precision and perspicuity of their style, than for the clearness of their conceptions; and in a case where the description, being corrected in relation to the River Connecticut, affords an incontestable proof of the strict attention they paid to the terms used in describing that part of the boundary.

What renders the supposition, that those ministers expressed themselves in terms so contradictory of the intentions gratuitously ascribed to them, still more outrageous, is, that there would not have been the slightest difficulty, with Mitchell's Map before them, in defining with the utmost precision, if so intended, the boundary line as now contended for by Great Britain.

Had the intention been, as is affirmed, to assign to Great Britain the whole of the basin of the River St. John, there would not have been any occasion, either to refer to the North-west angle of Nova Scotia, or that any part of the boundary should have been a line drawn due North from the source of the River St. Croix. In that case, the boundary would, by any ordinary conveyancer in possession of Mitchell's Map, and of the intentions of the parties, have been described in the following words, or in other as explicit, and of the same import, viz:

From the source of the River St. Croix, along the Highlands which divide the rivers that empty themselves either into the River St. John, or into the River St. Lawrence, from those which fall into the Atlantic Ocean, West of the mouth of the River St. Croix, to the North-westernmost head of Connecticut River, ... East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source.

Had it been intended, though for what object, with the intentions ascribed to the negotiators, (*m*) is altogether unintelligible, that a due North line drawn from the source

(*m*) Particularly if they had in view that height of land of Governor Pownall in which the River Passamaquada has its source.

Intentions. of the River St. Croix, should form a part of the boundary, a slight alteration in the phraseology would, with equal facility, have effected that purpose. There would have been no more difficulty in thus describing the boundary, from Mitchell's Map, than the British Agent under the late commission found in delineating it on that very map.(*n*)

All the arguments which have been adduced on the part of the United States, in opposition to the British line, are equally applicable to any other boundary that may be suggested, other than that claimed by them.

Here too, since it is manifest by Mitchell's Map, and since therefore it was known to the framers of the treaty that it was impossible, that any boundary line whatever, extending Westwardly from any point whatever of the line drawn due North from the source of the River St. Croix, should divide rivers falling into the River St. Lawrence from rivers falling into the Atlantic Ocean, unless the River St. John was included amongst these; it necessarily follows, that it is impossible that those ministers should not have held the River St. John to be one of the rivers falling into the Atlantic Ocean, which they intended to be divided by the boundary, from those which empty themselves into the River St. Lawrence. In which case, it is also manifest by Mitchell's Map, that they could not have intended any other point on the due North line, as the North-west angle of Nova Scotia, than the intersection of the said line with that dividing ground, in which, according to the map, the rivers which fall into the River St. Lawrence have their sources; and therefore, that no other highlands could have been intended by the framers of the treaty, as the boundary between the dominions of the two Powers, than those which are claimed, as such, by the United States.

II.

North-westernmost head of Connecticut River.

§10.

North-westernmost head of Connecticut River.

The United States claim, as the North-westernmost head of Connecticut River intended by the treaty, that source which lies North-west of any other source of any of the branches of the river, without regard to the specific names, or respective magnitude of those branches.

The designation of "North-westernmost head" necessarily implies a selection between two or more sources. And the words "head of *Connecticut River*," and "thence downalong the middle *of that river*," necessarily mean, "head of and along the middle of *the branch* of that river," the source of which would be declared to be the North-westernmost head of Connecticut River. The designation was correct, since, guided by Mitchell's Map, the framers of the treaty must have considered any of its nameless upper branches, as equally entitled to the appellation of Connecticut River. And it has already been observed, that the principle is admitted by Great Britain, since she claims as the North-westernmost head intended by the treaty, the source of a nameless rivulet, *along the middle of which*, from its source to its junction with the other waters of the river, the boundary is claimed to extend, although it is not pretended that the rivulet is known by the name of Connecticut River.

But Great Britain makes two exceptions to the principle; and maintains, 1st. That the North-westernmost head intended by the treaty must be the head of a branch, that unites with the other waters of the River Connecticut, above the highest point where it assumes the distinguishing title of Connecticut, or Main Connecticut; and 2dly. that

(*n*) Topographical Evidence—Surveys—See the two several extracts from Mitchell's Map, presented by the British Agent, No. 29, American, and K. British.

Hall's Stream must also be excluded, on account of its uniting itself with the main river, at a point below the place which was, at the date of the treaty, considered as the intersection of the said main river, and of the 45th degree of north latitude.

North-western most head of Connecticut River.

Even admitting all the facts assumed by Great Britain, there does not appear to be any solid reason for those exceptions.

The term "North-westernmost" necessarily implies a selection between at least the respective sources of two distinct branches. One of these might have received the exclusive designation of "Main Connecticut;" and the source of the other branch, if found to be the North-westernmost of the two, must necessarily have been declared to be that intended by the treaty. In that case, the boundary declared to be from that head along the middle of the river, would have extended along the middle of a branch that united with the other below the ' ghest point, where this was known by the distinguishing title of "Main Connecticut." And since the word "river," clearly means there, as admitted by Great Britain, a certain branch of the river, it is not perceived on what ground it is pretended that the boundary line cannot extend along that branch to the 45th degree of north latitude.

With respect to the last objection, it will only be added, that if the boundary from Connecticut River, to the River St. Lawrence, shall be determined to be along the 45th parallel of North latitude, as ascertained by the late observations, Hall's Stream will be found to unite itself with the main river above, and not below the intersection of that parallel with the river; and that it will then, in that respect, be free of any objection.

The obvious meaning of the word "river," as used in that clause of the treaty, sufficiently refutes the assertion, "that no stream which joins the Connecticut River, below any point where the river is known by that distinctive appellation, can with any propriety, or *consistently with geographical practice*, be assumed to be *the* River Connecticut." But it is proper to observe that the geographical practice alluded to, is not that which prevails in America.

In Europe, every tributary stream, or branch, of every river, has been for ages almost universally known by a distinctive name. It is admitted that, although every source of any such branch is in fact one of the sources of that portion of the main river which flows below the mouth of such branch, the sources of a tributary stream, which is known by a distinct name, would not, in common language, be considered as the sources of the main river. It would be improper to designate the sources of the Marne, by the name of "Northern sources of the Seine." And if the framers of the treaty had defined a boundary in Europe, they would undoubtedly, in reference to the branch or source of any river, have used, instead of such an expression as "North-westernmost head," the specific and distinctive name by which the branch was known.

But, in America, the upper branches of a river, when they are first discovered and explored, are most commonly distinguished from each other, only by appellations indicative of their course; neither of them being exclusively designated as the main river. Of this, numerous instances may be given, even in relation to rivers of considerable magnitude, such as the West Branch of Susquehanna, the North Branch, and the South Branch of the Potomac, &c. all of which are to this day known by no other names. (*nn*) The reports of the Surveyors under the late commission, and the Map A, afford also several instances, with respect to branches which had till then been unexplored; such as the North-west, the West, and the South-west branches of the St. John, and the East, the West, and the North-west branches of the Penobscot, neither branch of which last River is called the "Main Penobscot."

nn) Pownall, pages 36 and 38

North-westernmost head of Connecticut River.

It may be confidently asserted, that, so far at least as relates to the yet uninhabited parts of the country, and the geography of which is but imperfectly known, the words "sources" and "heads," as applied to the upper waters of a river, are, in America, universally understood to embrace the sources of all its branches.

Thus, in a passage already quoted from Governor Pownall's Topographical Description: "All the Heads of Kenebaëg, Penobskaëg, and Passam-aquâda Rivers are on the Height of the Land running East-north-east;" the sources of all the tributary streams of the Penobscot and of the other rivers therein mentioned, are evidently included under the denomination of "All the Heads," &c.

The preceding observations may be illustrated by a supposed case, taken from Map A.

It has already been observed, that the various upper branches of the River St. John, have no other distinctive names but those of West, North-west, South-west branch, &c. whilst one of them is exclusively distinguished by the name of "South or Main Branch of the River St. John," and, in some of the Reports of the Surveyors, is called the "Main St. John." (*o*)

Supposing that the State of Maine should divide the territory on the River St. John, into two districts, and should define the boundary, as "beginning at the South-westernmost source of the River St. John, thence down along the middle of that River, to 46° 25′ of North latitude, thence along the said parallel of latitude," &c. is it not clear that, although the South-west unites with the South Branch of the river, below the point where this is known by the name of Main St. John, and below the point where it is intersected by the parallel of latitude above mentioned, the South-westernmost head would nevertheless be understood to mean, the source of the South-west Branch, at the point marked L, on the American Transcript of Map A?

In all the preceding observations, the facts assumed on the part of Great Britain have been taken for granted. Her claim rests on the double assertion, that the Lake branch of the Connecticut River was, at the date of the treaty of 1783, known by the distinctive name of "Main Connecticut;" and that this fact was known to the framers of the Treaty. These are questions of fact at issue: the United States are not bound to prove a negative; the burden of the proof falls exclusively on Great Britain; and the evidence which has been produced, so far from sustaining the assertions, proves the reverse.

The grant to Dartmouth College, by the State of New Hampshire, would only prove, that the distinctive appellation contended for was in use in the year 1789, or about six years after the treaty.

The only other evidence adduced on the part of Great Britain, is contained in the report of Dr. Tiarks, and although hearsay, ex-parte, and not taken on oath, will nevertheless be admitted to its full extent, but not beyond that extent.

Mr. Tiarks was informed by all the persons that he had an opportunity of consulting, that the river into which Indian Stream discharges itself, (the Lake branch,) is commonly called Connecticut River, or sometimes the Main Connecticut River, to distinguish it from the other smaller streams, which have all particular well known names; and that this river (the Lake branch) is never designated by the inhabitants, by the name of the Eastern branch of the Connecticut River, or distinguished by any name but those stated above. Mr. Tiarks collected that information in the month of October, 1820; and he refers particularly to Jeremiah Eames, Captain Eames, and John Hughs, inhabitants of New Hampshire, who, as he says, have known that river and hunted on it more than thirty years ago, and always lived in the vicinity. (*p*)

(*o*) C. Campbell's and F. Odell's Reports. British Evidence, No. 10, pages 94 and 114.
(*p*) Written Evidence, No. 56, and British Appendix, page 130.

Thus all the information that Mr. Tiarks could collect, in support of the British pretension, was, that the Lake Branch was called Connecticut, or the Main Connecticut River, as early as the year 1790, that is to say, seven years subsequent to the date of the treaty of 1783. North-western most head of Connecticut River.

The information was received from those persons who, as hunters, are the earliest explorators of the unsettled parts of the United States. And what renders Mr. Tiarks' account decisive, to prove that the Lake Branch had not been explored by the Americans, or at least was not called the Main Connecticut River, prior to the date to which he refers, (1790) is that he had no difficulty in finding, and that he states the name of Hall's Stream to be derived from a hunter of the name of Enoch Hall, that it had been generally known at least ever since the year 1780 by this name, and that a gentleman had informed him that he heard the name in the year 1772.

This last information was perfectly correct. In a letter from John Collins, the Surveyor appointed on the part of the Province of Quebec, to survey the division line between that Province and that of New York, dated "Boundary on the Connecticut, October 1st, 1772," he informs the Surveyor General of New York, that the line terminated (on Connecticut River) two miles and five-eighths of a mile above the mouth of Hall's Brook, ninety miles from Lake Champlain. (q)

Dr. Tiarks' silence, with respect to the time when the other streams, viz: Indian Stream and Perry's Stream, first received their "particular well known names," is a decisive proof that these names are of a later origin than the date of the Treaty. They are all English, and could only have been given by American settlers.

Governor Pownall, who wrote in 1775, states the highest settlement up the river, to be four miles above the Amanuseag, and about thirty miles South of the 45th parallel of North latitude. (r) The war with Great Britain, and, above all, the Indian hostilities, necessarily prevented the progress of settlement, till after the restoration of peace; and it is only subsequent to that epoch, that the upper branches of the river could have been settled, explored, or distinguished, by specific names.

There is not a single map, published prior to the Treaty of 1783, in which those branches are laid down correctly. There is not a single one in which any trace can be found of the Connecticut Lakes, which particularly characterize the branch pretended to have been known at that time by the name of "Main Connecticut River."

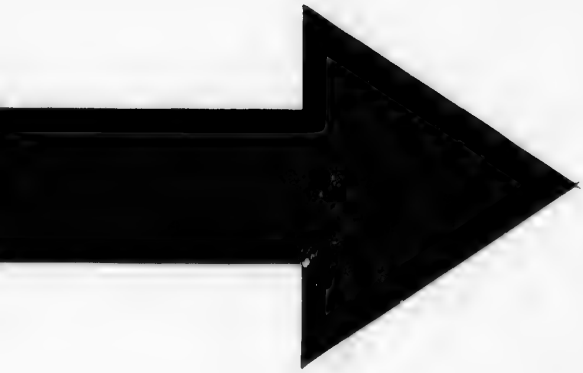
C. R. Sauthier, one of the Surveyors who surveyed the boundary line between the Provinces of Quebec and New York, published, in the year 1779, a large map of the Province of New York, dedicated to Governor Tryon. In that map, which is compiled from authentic documents, the Northern boundary of the Province is laid down in exact conformity with the official survey of the line. (s) It will appear evident, on an inspection of the map, that the river had not been explored North of that boundary; and that the stream there represented as the principal upper branch, is Indian Stream. It is not improbable that this name was derived from the branch being the usual Indian path to the River St. Lawrence, and that, on that account, its position was better known than that of any of the other branches. Another remarkable circumstance is, that the branch itself is, on the map, designated by the name of "Head of Connecticut River." If this map, therefore, was consulted, either by Congress in the year 1779, or by the framers of the Treaty of 1783, the inference seems unavoidable, that it was thence that that expression was borrowed, and that no branch, East of Indian Stream, was the head of Connecticut River contemplated in the instructions of Congress of August, 1779, or in the treaty.

The result of this inquiry, therefore, is, not only that no proof has been adduced,

(q) Written Evidence, No. 26, page 218.

(r) British Evidence, No. 40, page 294.

(s) Topographical Evidence. Surveys, No. 30, and Engraved Map, No. 56



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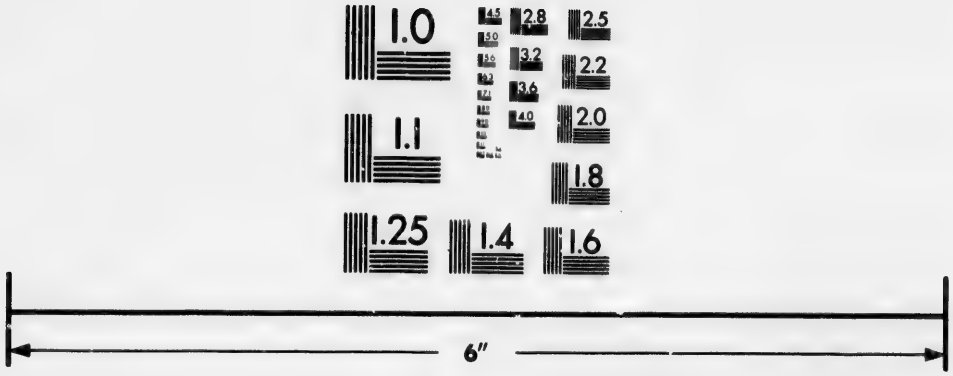

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North-westernmost head of Connecticut River.

that the Lake branch, or any other, was, at the time of the Treaty of 1783, exclusively distinguished by the name of Connecticut River, but that there is a strong probability, that another than the Lake branch was contemplated as the North-westernmost head of Connecticut River.

The framers of the treaty could not, of course, have been acquainted with any distinctive name which was not in use, even in that part of the country, at the date of the treaty. But it must be observed, that the special objection to Hall's Stream rests on the supposition, that they knew that the main branch of the Connecticut River was already then distinguished by that name, at a place more than two miles above the mouth of that stream. And it is extremely improbable, that they should have been acquainted with that particular fact, the only proof of which was to be found in Sauthier's Map, (*t*) and in the unpublished Reports of the Surveyors, who had surveyed the boundary line, along the 45th parallel of North latitude, between the Provinces of New York and Quebec.

If reference is had to Mitchell's Map, as the proper test of the intentions of the framers of the treaty, it will be seen, that it only exhibits two main upper branches of the Connecticut, without any distinctive name; neither of which, either from its size, or from any other indication on the map, can be considered as exclusively entitled to the designation of "the Connecticut River;" and that the negotiators, therefore, must have intended, as the North-westernmost head of that river, that source which would be found to lie North-west of any other, without any reference whatever to either of the branches, to the exclusion of the other.

There has never been any doubt on the question in America. The State of New Hampshire had the boundary surveyed in the year 1789, in conformity with the treaty; (*u*) and it is laid down accordingly in Carrigan's Map, published in 1816, (*v*) as well as in that of Hale, of a subsequent date; both of which have been adduced as evidence on the part of Great Britain. It could not indeed have been expected, that either the source of the *main* branch of the river, as such, or the *North-easternmost* head would ever be claimed as being the *North-westernmost* head of Connecticut River intended by the treaty.

III.

BOUNDARY LINE FROM THE CONNECTICUT RIVER TO THE RIVER ST. LAWRENCE.

§ 11.

Boundary Line from the Connecticut to the St. Lawrence.

The British Statement, on this branch of difference, calls only for two observations.

1. The Astronomer of the United States thought it his duty to suggest every scientific consideration that appeared connected with the case: And their Agent, under the late commission, performed his, in submitting to the board all the observations which had thus been communicated to him.

The American Commissioner, for the reasons stated in his report, did not think it proper to express, at that time, any opinion on the questions relating to the *surveys* of any part of the boundary. The Government of the United States, without inquiring for what purposes and in what cases the figure of the earth renders a correction of the observed latitude necessary, concurs in the opinion, that the "geocentric latitude" having never been admitted in geography, the observed latitude, according to

(*t*) Engraved Maps, No. 56, In this Map, Hall's is called Elm Stream.
(*u*) Written Evidence, No. 52.
(*v*) Topographical Evidence. Surveys, No. 28.

which the latitude of places has been universally laid down in every map, and inserted in every usual table heretofore published, can alone be appealed to in a question relating to the construction of a treaty.

Boundary Line from the Connecticut to the St. Lawrence.

2. There will be no practical difficulty in ascertaining the ancient boundary line if confirmed. It was surveyed as correctly as any of the other boundaries between the different States, and as can generally be done with the compass through a forest. It is known though its whole extent, having been for near sixty years the acknowledged boundary between the Province, or State of New York, and Canada; and the line which separates, from each other, the grants of land made in that quarter by the two Governments, from the Connecticut to the River St. Lawrence.

All which is respectfully submitted by the Undersigned, Agents of the United States in the negotiation, and upon the umpirage relating to the North-eastern boundary of the said States.

ALBERT GALLATIN,
WILLIAM PITT PREBLE.

NOTES TO THE STATEMENT.

A.

MADAWASKA FIEF.

Notes to the Statement.

Madawaska Fief.

It has been stated, that the Madawaska Fief appears much larger on the British Transcript of Map A, than it really is. This error has its origin in the terms of the first concession of the Fief, in the year 1683; (British Evidence, No. 13,) in which the Grant is for three leagues, along each of the two banks of the River Madawaska, near the River St. John, together with the lake called Cecemiscouata, and two leagues depth inland: whence it has been concluded, that there were also two leagues depth granted, around the Lake Temiscouata. But the Fief was sold, by virtue of a judgment in 1755, (British Evidence. No. 17.) And according to the sale, the adjudication was for the Fief of Madawaska, as containing three leagues in front, on each side of the river of the same name, by two leagues in depth, together with the whole extent of the Lake Cetemiscouata. In the Act of Faith and Homage, by P. Claverie, for the said Fief, in 1756, it is described as being on the river of the same name, situated near the River St. John, together with the Lake Cecemiscouata, adjacent thereto, (ensemble le Lac Cecemiskouta y joignant,) and as containing three leagues front, on each side of the said river of the same name, by two leagues in depth, not being able to state the extent of the said Lake Cecemiskouta. (British Evidence, No. 18.) The same expressions had been already used, in the *Aveu et Dénombrement* of the year 1723. (British Evidence, No. 16.) Again, in the receipt for the domains and dues of the year 1756, the Fief is described as being on the river of the same name, together with the Lake Cecemiskouta, adjacent to the said Fief of Madawaska, and containing, &c. as in No. 18. (British Evidence, No. 19.) Finally, the Fief is described precisely in the same manner, in the Deed of Sale to James Murray, by the Representatives of P. Claverie, of 20th July,1763. (British Evidence, No. 20.) Whatever then may have been the intent of the original concession of 1683, it is clear, that neither P. Claverie, nor James Murray, nor the present owner who claims under him, can claim more than was sold to the said Claverie, by the judicial sale of 1755, and by his representatives to J. Murray; that is to say, three leagues front by two leagues depth, on each side of the River Madawaska, and the Lake Temiscouata, adjacent thereto, but without any land around the said lake.

B.

GOVERNOR POWNALL'S INFORMATION.

Governor Pownall.

Speaking of the height of land between the Rivers Kennebec and Chaudiere (page 17), he declares himself to be totally uninformed "of the nature and course of this highland in these parts;" meaning clearly of the highland beyond that specified point, which he designates with great precision.

The source of the Kennebec, with which he was acquainted, he states (page 22) to be in "the height of the land in North latitude 45° 20';" and the route which he had investigated to be that of Arnold and his people. The map A will shew that the branch of Kennebec to which he alludes, is the "Dead River," the source of which is in the above mentioned latitude, and opposite to that branch of the Chaudiere, now called "Arnold River," from

his march. With the main north branch of the Kennebec, Governor Pownall was unacquainted: speaking of it, he says, "The North Branch is said (I speak not here from the same degree of authority) to arise in and issue from a *little* pond," &c. And he does not even mention the largest and most remarkable lake of the whole country, viz: the Moose Head, or Moose Lake. His information, therefore, did not extend north of the Dead River, which, through its whole course, as will be seen by Map A, is more than 50 miles south of any part of the British line.

Notes to the Statement.

Governor Pownall.

In relation to the Penobscot, he describes it correctly as high up as themouth of the Passadumkeag River, (page 21.) With the same precision he states, the fork of two Branches, two miles and a half above the south-east branch, being that called on Map A, the Piscataquis River. With respect to the main or north branch, he only alludes to the Madawamkeag Indian town, as being six miles higher up, and speaks of the river as coming to this place, south-east about 16 miles from some ponds, whence it takes its source. This must be the Matawamkeg River; and his information went no farther. He was entirely unacquainted with even the existence of the Main Penobscot, which extends thence, near ninety miles to its north-westernmost source, and with its main east branch, which runs northerly near 50 miles.

C.

SURVEYS UNDER THE LATE COMMISSION.

The line, drawn due north from the source of the River St. Croix, was surveyed during the years 1817 and 1818; viz: the first 99 miles as far as the River Ristigouche, in 1817, by the British Surveyor, Mr. Bouchette, and the American Surveyor, Mr. Johnson; and the remainder to its termination on Beaver Stream, a tributary of the River St. Lawrence, 146 miles from its commencement, in 1818, by Mr. Johnson and the British Surveyor, Mr. Odell. (Reports—British Appendix, No. 10, pages 51, 54, 72, 77. American Appendix, No. 56, pages 404, 405, 406. Surveys, Nos. 1, 2, 3, 4, and 27.)

Surveys under the late Commission

The northern extremity of the due north line, was again examined in 1820, by the British Astronomer, Dr. Tiarks, and the American Surveyor, Mr. Burnham. (Reports—British Appendix, pages 121 and 135.) And Mars' Hill, on the line, was again visited in 1819, by Mr. Odell, and by the American Surveyor, Mr. Partridge. (Reports—British Appendix, pages 88 and 95. American Appendix, pages 410 and 413. Survey, No. 5.)

Mr. Johnson visited, also, in 1818, Green Mountain, west of the due north line, and the Temiscouata Portage; which last place was also examined by Mr. Partridge, in 1819. (Reports—British Appendix, pages 77 and 95. American Appendix, pages 406 and 413. Surveys, Nos. 3 and 5.)

In the year 1819, Mr. Partridge and Mr. Odell ascended the River Ristook as high as its forks, and returned without having accomplished their object, which was to penetrate to the British line. (Reports—British Appendix, pages 97 and 89. American Appendix, page 410. Surveys, Nos. 6 and 7.)

In the same year, the American Surveyor, Mr. Hunter, ascended the River Aliguash to its source, crossed the British line at the Umbazucksus Portage, ascended the north-west branch of the Penobscot, from the Chesumcook Lake to its source, and descended the River to its confluence with the Matawamkeag. (Reports—British Appendix, page 106. American Appendix, page 414. Surveys, Nos. 8, 9, and 10.)

In the same year, the British Surveyor, Mr. Campbell, from the Schoodic proceeded to the Matawamkeag, thence, some distance up the Penobscot, and visited Mount Cathadin. (Reports—British Appendix, page 90. American Appendix, page 411.) Mr. Odell, and the American Surveyor, Mr. Loring, visited the same mountain, in 1820, and, proceeding up the Penobscot, crossed the British line at the Umbazucksus Portage, but went no further than the Aphmoogene Lake, on the River Aliguash. The same portage was again visited, the same year, by Mr. Campbell, who, thence, descended the Aliguash to its mouth. (Reports—British Appendix, pages 113, 146, and 119. American Appendix, pages 416, 423, and 417. No Survey but that of Mr. Loring, Nos. 16 and 17.)

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In 1820, the American Surveyor, Mr. Hunter, and the British Surveyor, Mr. Loss, ascended the River St. John to the sources of its west branch, and within ten miles of the source of its main south branch; when ascending a small south-west branch to its source, they crossed the British line to the Penobscot, by a portage, situated six miles east of the point L, on the American Transcript of Map A, where the conflicting lines meet. (Reports—British Appendix, pages 144 and 124. American Appendix, pages 421 and 422. Surveys, Nos. 19 and 20.)

The Metjarmette Portage, where the two conflicting lines meet, was surveyed the same year, by Mr. Burnham, and the British Surveyor, Mr. Carlile: (Reports—British Appendix, pages 139 and 134. American Appendix, pages 419 and 420. Surveys, Nos. 25 and 26.)

In the same year, Mr. Campbell explored a portion of the highlands, acknowledged as such by both parties, several of the upper waters, and particularly the south-western branch of the River Penobscot. (Reports—British Appendix, pages 93 and 116. American Appendix, pages 412 and 417. Surveys, Campbell's Sketch, No. 18.) And Mr. Odell ascended the Penobscot, to the sources of its northern and western branches, and crossing the British line, at the same portage which had been examined by Messrs. Hunter and Loss, descended the Main St. John, to where it crosses the due north line. (Reports—British Appendix, page 115. American Appendix, page 416.)

On the American line, the Tuladi and Green River Portages were examined the same year, by Messrs. Burnham and Tiarks, and that of the River Ouelle by Messrs. Burnham and Carlile. (Reports—British Appendix, pages 136, 122, and 134. American Appendix, pages 418, and 420. Surveys, Nos. 13, 14, 15, 23, and 24.)

All the other Surveyors' Reports and Surveys relate to the highlands, from the sources of the Kennebec to those of the Connecticut, and to the upper branches of the last mentioned river.

The line, drawn due north from the source of the River St. Croix, rises gradually in its northerly course. At 40 miles from the said source, it passes along the eastern basis of Mars' Hill, where its elevation above the surface of the River St. John, six miles distant, is stated at 523 feet.

According to the section of Mars' Hill, given by Mr. Partridge, its two peaks, about one mile west of the due north line, are 1,363 and 1,504 feet, respectively, above the River St. John. The two American Surveyors represent it as an insulated eminence, or totally disconnected with any other range of heights. Mr. Johnson adds, that the adjacent country is low and swampy, though considerably elevated above the waters of the St. John. The British Surveyor, Mr. Odell, is silent as to the immediately adjacent grounds to the west of the hill, except that he speaks of *indescribable* (*w*) ridges, which, viewed from Mars' Hill, appear to rise, generally, from the foot of that hill, towards the south-west.

About 60 miles north of Mars' Hill, the north line, after having crossed the River St. John, reaches the highlands which divide the waters of that river from those of the Ristigouche. Mr. Johnson says, that this ridge, which is called Sugar Mountain, is evidently the highest land on the line from the source of the St. Croix to that place. This is confirmed by Mr. Bouchette's vertical section, by which it appears that this mountain (no. 7 of the River St. John) is more than 500 feet higher than the highest peak of Mars' Hill, or more than 2,000 feet above the surface of the River St. John.

At the distance of 132 miles from the source of the River St. Croix, the north line reaches the summit of a ridge which forms the north bank of the Grande Fourche of the River Ristigouche. This, according to Mr. Odell, has the appearance of being the highest point intersected by the line north of the last mentioned highland; and, according to Mr. Johnson, it is the highest of any, either north or south of it, in the whole line.

Proceeding north, the land continues high, but descending moderately about 12 miles, to the point which divides the waters of the Ristigouche from those which fall into the

(*w*) Yet he has made a ground plan of those very ridges, which he saw from Mars' Hill, and which even thence, were, as he calls them, *indescribable*. See his Map—Surveys, No. 7.

River St. Lawrence, and which is claimed by the United States as the North-west Angle of Nova Scotia.

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It must be observed that, at that time, it was hoped by the British Agents, that there would be found, from Mars' Hill to the sources of the Chaudiere, a continuous chain of high and conspicuous mountains. And, on that account, Mr. Odell considered the table land, which extends from the summit of the banks of the Grande Fourche (at 132 miles) to that of Beaver Creek, as not entitled to the designation of "Highlands."

But, making every due allowance for the slight differences between the statements of the two surveyors, it appears clearly that the dividing ridge, at about 144 miles from the River St. Croix, the (point A on map A.) is somewhat, but not much, lower than the ridge at 132 miles, presumed to be the highest spot on the whole line; and that its elevation may therefore be estimated, so far as a survey, without an accompanying section of the line, may be relied upon, at about 2,000 feet above the level of the sea.

At a distance of about 70 miles, in a course South of West, is found the Temiscouata Portage, the road across which intersects the dividing Highlands in several places. It has been travelled over by several of the Surveyors, and Mr. Partridge, who made a series of barometrical and thermometrical observations, from high water mark at St. Andre across to Lake Temiscouata, gives the following table of altitudes above the tide water of the St. Lawrence at St. Andre, viz:

Grand Portage,	Grande Fourche Mountain, - - - - -	1336
	Paridis Mountain - - - - - - -	1309
	Biar Mountain - - - - - - -	1320

Of the *mountainous character* of that part of the country, in the sense attached to that term in the British Statement, there can be no doubt; and it will be perceived that the several ridges crossed by the road have specific names, and are all called "mountains."

But the United States had no motive to ascertain either the elevation or character of the highlands claimed on their part as the boundary; and the American Surveyors appear, generally, to have been more intent in discovering the greatest depressions of that ridge, than in seeking for proofs of its general elevation; since, in almost every instance, they selected for objects of investigation the well known Indian portages or carrying places, which must be, and are invariably, those along the ridge, that separates from each other the sources of streams flowing in different directions, which are both the shortest and the least elevated.

The character of two of the lowest of those gaps or depressions, the Tuladi and Green River Portages, has already been given in the text, and is described at large in Dr. Tiarks' report. But, since it is declared in the British Statement that "It is of course not pretended, on the part of Great Britain, that, in order to support the character which she assigns to the term highlands, those highlands should present an absolutely unbroken and continuous ridge, without the intervention of valley or swamp," we will ask, in what respect the highlands, from the North-west angle of Nova Scotia claimed by the United States, to the Western extremity of the Temiscouata Portage, differ from "highlands" of the character which Great Britain assigns to that term?

With respect to the British line, along which, from Mars' Hill to the Metjarmette Portage, where it meets the American line, two places only have been examined, that called the Umbazucksus or Aliguash Portage is about 75 miles West of Mars' Hill, in a straight line.

Mr. Odell describes the Umbazucksus as a small stream, which takes its rise in a pond of the same name. He states that, "From Umbazucksus Pond, there is a portage of two miles to Pongum Gamook or Mud Lake, the first St. John water: this lake is about three miles long, and nearly one in breadth, but very shoal, with a soft muddy bottom, and covered with pond lilies; the land immediately around the lake swampy." But both he and Mr. Campbell are silent as to the nature of the ground across the portage. Mr. Hunter describes it as nearly level and marshy, and Mr. Loring states that the highest point is 52 feet above the surface of the Chesumcook Lake.

The other place, which is only six miles east of the Metjarmette Portage, is that which was surveyed by Mr. Hunter and Mr. Loss. It is described by Mr. Odell as being all bog

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and swamp, except about half a mile, where the ground is a little more elevated; and the description by both Mr. Hunter and Mr. Loss is the same in substance.

The Metjarmette, which is an Indian portage, is at the Western extremity of the British line, and common to both lines, being the place where the South-west branch of the River St. John, the North-westernmost branch of the Penobscot, and the Metjarmette, one of the tributary streams of the River Chaudiere, (which falls into the River St. Lawrence,) have their sources. There is a mountain about three miles East of the portage; but the portage itself is of the same character with those of the Rivers Tuladi and Ouelle.

The River Metjarmette, Mr. Carlile says, commences in a swamp; the source of one of the branches of the Penobscot is in the same swamp: one half mile East there is a division of the waters of the St. John and Penobscot Rivers, in some marshy ground.—(British Appendix, page 134, and American Appendix, page 420.)

Between that portage and Mars' Hill, no other place but the two above mentioned portages has been surveyed along the British line; nor did any of the surveyors visit a single one of the mountains delineated on that line in the British Transcript of the map A.

The country between Mars' Hill and the Umbazucksus Portage was approached only in two places—Mount Cathadin on the South, and a hill on the bank of the River Ristook on the North; both about 25 miles distant from the British line.

If we trace, on map A, the country within the following bounds, viz: from the River St. Croix West to the Penobscot; up this river, through the Chesumcook Lake, to the Umbazucksus Portage; thence, through the Aphmogene Lake, down the Aliguash River, to its mouth, and down the River St. John to the place where it is intersected by the due North line; and thence South, along the said line, to the source of the River St. Croix; the boundaries thus described designate the explorations made by the surveyors, within which, with the exception of the partial survey of the Ristook River and the ascent of Mount Katahdin, not a single spot appears from the surveys to have been explored or visited by any of the Surveyors under the late commission.

There is not, amongst all their surveys, any other evidence of the mountains within that tract of country, which are laid down in the British Transcript of map A, than Mr. Campbell's Sketch (No. 18) and the views taken by Mr. Odell from Mars' Hill and from Park's Place, which is situated near, and East of, the due North line, and about 25 miles South of Mars' Hill.

Mr. Odell might, if he had thought it proper, have laid before the Commissioners a sketch of the perspective view of the hills, which appeared to him to terminate the horizon, as seen from any of his stations, in the same manner as navigators annex to their charts views of the land as seen from some point, or as the views or appearances of mountains, or of any landscape, are inserted in books of travels. But this is, it is believed, the first time that it has been attempted to convert the distant appearance of either ridges or detached hills, seen from one or two points, into an actual survey, or ground plan, of an extensive tract of country, such as has been incorporated by Mr. Odell in his real survey of a single river, (of the Ristook, No. 7.)

This tract of country not having been at all explored, was left a blank in map A, and it has not been filled in the American Transcript; though, judging from analogy, it may be considered as certain, that it is intersected throughout by branches of the Penobscot and of the Ristook, the sources of which are not probably, in any instance, farther than one mile apart. And, as these were necessarily concealed from Mr. Odell's view by the intervening hills and forest, he has omitted them altogether, giving to the whole the fallacious appearance of an extensive highland, with scattered peaks.

It is not to this moment understood, on what *fact*, which could possibly have sustained that plan or map, it was intended to examine Mr. Odell on oath. He could only have stated what was already in proof, viz: that he did *believe* that the hills which he had not surveyed or visited, but only seen at a distance, lay in the manner represented on that plan; and the peremptory objection would have still remained unanswered, that the position assigned by him to those hills on the *plan*, was not a fact, but only an inference or conjecture, the correctness of which it was impossible for any human being to affirm.

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Mr. Campbell's Sketch embraces both a certain portion of country, lying on some of the upper Western branches of the Penobscot, which he had explored, and the whole of the country adjacent to the British line, as far East as the due North line, which he had not visited. His sketch of this last portion, which is by far the greater part of the whole, is evidently entitled to no credit whatever. His view appears to have been taken from a station near one of the sources of the Penobscot, at least one hundred miles distant from Mars' Hill, which he thought he could distinguish by its two peaks, the elevation of which does not differ two hundred feet one from the other. If he was not mistaken, the absolute height of Mars' Hill being but about 1,300 feet above the level of the sea, and its distance from the observer one hundred miles, the whole of the intervening country, along the British line, through nearly its whole extent, must be comparatively a valley.

It is to be regretted that, instead of a rough, and as will appear by map A, a very incorrect sketch, Mr. Campbell had not, as the other Surveyors, annexed to his Reports a correct plan of the ground which he had actually explored.

It appears that, having reached the height of land in which the Kennebec takes its source, he proceeded about 22 miles along the highlands, acknowledged as such by both parties, having crossed the Drover's Road (the "Image" on map A) at four miles, and found at eleven miles the sources of a branch of the Penobscot, and of one of the Chaudiere, less than one mile apart. So strong was the erroneous impression under which the British Agent and Surveyors acted, that, forgetting that the division of waters was the essential condition attached to the highlands described by the treaty, and ever in search of elevated ridges in the direction of the British line, Mr. Campbell being then ten or twelve miles South of the point where the conflicting lines meet, left the true highlands, acknowledged as such by both parties, the moment he found they became less elevated. Their acknowledged continuation to the Metjarmette Portage, is designated on his Sketch as "low land;" and he considered as "the main" a broken Easterly ridge, on account of its favorable direction and mountainous character. He pursued this and describes it as follows, viz:

"At about 22 miles the *main ridge* assumed a different appearance and shape, but *continues* nearly the same course. Instead of a regular ridge as heretofore, running straight, there is now a succession of high mountains and ridges, some of them two and three miles in length, lying East-north-east and West-south-west, and some of them East and West, and a number of detached hills and mountains on either side, at two, four, and even six miles distance from the main ones; among which are ponds and small lakes, with outlets or streams, some running to the North and others to the South, taking their rise in the neighboring hills, and running through the intermediate valleys: at the same time a North-east course, by magnet, intersects most of the highest peaks."

That this succession of high mountains and ridges lay South of the British line, is proved beyond doubt. For after having pursued it in an East-north-east direction about 15 miles, (35 to 40 from his place of beginning,) and having ascended a branch of the Penobscot, he followed it down stream about eight miles, till he "came to the main branch of the Penobscot, running South-west to South-east; and, at about one and a half miles further, runs East between two hard wood hills, *forming part of the main chain or North-east ridge.*" (British Appendix, page 94. American Appendix, page 413.)

West of the Umbazucksus Portage, the Western branch of the Penobscot was explored by Mr. Campbell, to its source, for what purpose is not perceived, and the main North or North-west branch appears also to have been explored to its source by Mr. Odell, though he makes no mention of the Metjarmette Portage, nor of any other point on the British line, but the portage examined by Messrs. Hunter and Loss, which he crossed on his return down the St. John.

He does not appear to have ascended two Northerly tributary streams of the West branch of the Penobscot, viz: the Black River and Cheseboo, both of which head opposite the sources of two Southern branches of the St. John, although both were within his reach, and apparently not exceeding ten miles in length. He nevertheless mentions what he calls the "Guaspempsistuc Mountains," which he saw from three different places, as lying

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between the head of the Cheseboo and the main South branch of the St. John. For the reasons already stated, it is impossible that he could have ascertained their true position; and Mr. Campbell, alluding certainly to the Cheseboo, (British Appendix, page 118; American Appendix, page 417,) states from hearsay information, that the portage between its source, and that of the St. John, is through a heath bog, surrounded by part of the same "main ridge" that he had before traced. Besides this, there is on the British Transcript of Map A, on the portage between the source of the Black River and the opposite Southerly branch of the St. John, a range of hills called Quacumgamooksis Mountains, the authority for which has not been discovered in the reports of the Surveyors.

In addition to what has been mentioned in the text, respecting the character of the highlands between the sources of the Kennebec and those of the Connecticut, it may be added that, according to Dr. Tiarks' Survey of the upper branches of the last mentioned river, (No. 12,) there is no apparent difference between the character of that height of land, and that of the portages on the American line which he had examined; the ridges which he has delineated being parallel to the branches of the Connecticut, instead of running between their sources and those of the tributary streams of the St. Lawrence.

It is not intended by any thing that precedes, either to admit or to deny the existence of mountains or elevations in the vicinity of the British line. It is only intended to affirm, that the evidence adduced in that respect is wholly insufficient. And it must be repeated, that, although the United States cannot *acknowledge as true* an assertion which is not proved, they may *admit*, without its affecting in any degree their right to the contested territory, that the country through which the British line passes, is more elevated or is better entitled than the highlands designated by the treaty, to the character of a "generally mountainous country," in the sense ascribed to those terms in the British Statement.

It may, at the same time, be observed, that the situation of the highest mountains in that district of country, is entirely different from that of the dividing highlands claimed by either Great Britain or the United States. A succession of insulated mountains or irregular ridges of a greater elevatian than any other, either in New England, or in the United States, East of the Stony Mountains, may be traced from the "White Hills," within sixty miles of the sea coast, extending in a North-east direction to "Mount Kathadin," situated between the two main branches of the Penobscot. The elevati n of the White Hills above the level of the sea, (v) is ascertained, and exceeds seven thousand; that of Mount Kathadin, is presumed to be near five thousand feet. The intervening very elevated and mountainous country, is intersected by the Penobscot, the Kennebec and their numerous tributary streams. A spur, known by the name of Kathadin Clump, extends Northwardly perhaps to some much lower mountains North of the sources of the Ristoook, which Mr. Greenleaf intended to include within his "mountainous part of Maine." The highest ascertained point on any of the highlands claimed by either party, is the place called "Image" on Map A, and is hardly more than 2000 feet above the level of the sea.

D.

MR. GALLATIN'S LETTER OF DECEMBER 25, 1824.

Mr. Gallatin's Letter, of 25th Dec. 1824.

In that part of Mr. Gallatin's confidential latter, which relates to the North-eastern Boundary, his object was to communicate the impression under which he was, that the Government of Great Britain did not intend seriously to assert its pretended claim, but had advanced it for the purpose of procuring with more facility an exchange of territory. Aware that the United States could not voluntarily cede or exchange (unless found to be, according to the original treaty of 1783, within the dominions of a Foreign Power,) any part of a State, he tried to remove the objection to an exchange, by asserting that the district in question, was not within the bounds of the State of Massachusetts, (now Maine.)

(v) Written Evidence, No. 45.

It has been shewn, in the most conclusive manner, in the First American Statement, that he was completely mistaken in that respect. But the manner in which the subject had been first presented, and the subsequent observations of the British Commissioners, justified his belief, that they had no faith in the alleged right of Great Britain, and were simply desirous of obtaining a cession for an equivalent. Notes to the Statement. Mr. Gallatin's Letter of 25th Dec. 1814.

An apology might perhaps be due, for having ascribed to the British Government an unsound argument, which, it is hardly necessary to observe, was nothing more than the untenable assertion, that the Gulf of St. Lawrence is not a part of the Atlantic Ocean. Mr. Gallatin had then no other knowledge of a question for the first time presented as doubtful, than what was derived from the treaty, and from maps in common use. After the most thorough investigation, he must say, that the preposterous reasoning, to which he thought Great Britain would perhaps be obliged to resort, does not appear to him much worse than any of the arguments, which have been since alleged to sustain her extraordinary claim.

E.

ENGRAVED MAPS.

Nos. 1 to 39, are principally intended to shew the understanding which prevailed prior to the date of the treaty of 1783, respecting the boundary lines of the British Provinces, as laid down by the Proclamation of 1763, and other public acts of Great Britain, and respecting the boundaries of the United States, as described by the treaty. Engraved Maps.

Nos. 40, 45, 51, 52, 54, 55, 56, and 57, are quoted in the American Statement.

No. 42, is the supplement of No. 40. Having adduced in evidence Mr. Bouchette's Map, No. 40, it was not deemed proper to omit his other maps, Nos. 41 and 43; in the first of which the British line is laid down along Mr. Holland's presumed highlands, and the two ridges or highlands respectively claimed by both parties, are also delineated. In No. 43, the due North line from the sourcce of the River St. Croix, extends to the highlands claimed by the United States.

No. 44, is principally intended to shew the subdivisions of the Province of New Brunswick, and its reputed boundaries, which do not differ materially from those laid down in map No. 43. The boundary line between the United States and Lower Canada, is laid down along Mr. Holland's presumed highlands.

Nos. 46 and 47, of the years 1755 and 1775, are evidently the same map, without any alteration as to the boundaries. No. 46 has been inserted to corroborate the facts proved by Mitchell's Map, that in 1755 the boundaries of Nova Scotia and of New England were understood by Great Britain to extend to the River St. Lawrence, and that the course and extent of the Western and Northern branches of the River St. John, were generally known. No. 47 has been inserted only not to omit any map bearing that date; but it proves nothing, as the boundaries prescribed by the Proclamation of 1763, are not laid down in it.

No. 48, published in 1760, corroborates the manner in which the boundaries of Nova Scotia and New England were understood at that time, and also, that the terms "land's height" and "highlands," were then used in that part of the country as synonymous.

Nos. 49 and 50, illustrate what has been stated respecting the line which is presumed to divide the River from the Gulf of St. Lawrence. No. 50 also shews, that the Western extremity of Bay des Chaleurs, or entrance of the River Ristigouche, is only ten miles from the dividing highlands, there called "Albany Ridge," or "Notre Dame Mountains."

No. 53, is that of the Middle British Colonies, annexed to, and illustrating Governor Pownall's Topographical Description, quoted in their Statements by both parties.

In map No. 54, quoted in the Statement for another purpose, will be found "Highland County," so called, as it would seem, on account of the high land in which rivers have their sources, which flow in three different directions, viz: East, to the Scioto; South, to the Ohio; and West, to the Little Miami.

Notes to the Statement.

Adolphus's History.

F.

ADOLPHUS'S HISTORY.

For what purpose Adolphus's History has been produced, unless it was in order to inflict on the officers of the American Government the penalty of reading the work, is altogether unintelligible. The only paragraphs of the Chapter inserted in the British Appendix, which relate to America, are the following:

"The general impatience for peace in England was founded on a despair of success in the principal object of the war, the reduction of America, and a conviction that the whole force of the nation was insufficient to resist the career of the enemy in other quarters. Success would have given a new impulse to popular energy, and frustrated the long labors of an almost successful opposition; but fortune declared against Lord North, and the hasty combination of heterogeneous parties, and their vigorous and persevering assaults on the Cabinet, impeded every measure for preventing, and sanctioned the proposition for conceding, the Independence of America."

"After the surrender of Lord Cornwallis, the attainment of this object by force appeared no more certain than at any previous period. The resources of America were exhausted, the long interruption of commerce produced a lamentable want of all necessaries, a want felt from the highest to the lowest classes throughout the Colonies. No art or coercion could give circulation to the paper currency; and not only the friends of Great Britain, but the warmest adherents of America, considered the maintenance of the Army for another year, and still more the establishment of Independency, as utterly impossible, and hardly desirable.* Sir Henry Clinton himself, after the surrender of Lord Cornwallis, forwarded an assurance to Administration, that with a reinforcement of ten thousand men, he would be responsible for the conquest of America;† but before this offer could be made, the Ministers, who alone could be expected to give it effect, were shaken; a new system was adopted, active hostilities were no more to be pursued, and Sir Henry Clinton being allowed to retire, was replaced by Sir Guy Carleton."

Those passages are a fair specimen of the information, impartiality, and intellect of the author.

It was after the surrender of Lord Cornwallis, when the only difficulty in maintaining the Army arose from a conviction that the contest was at an end, and any further effort unnecessary, that the warmest adherents of America considered, as Mr. Adolphus asserts, the establishment of Independency, *as utterly impossible, and hardly desirable.* His authority for that assertion is that of an unfortunate American, who was compelled to banish himself from his own country. And he has no other than what must have truly been very *private information*, for the singular offer which he ascribes to a cautious General, whom his own experience could not have rendered very sanguine of success.

We protest against any attempt that may be made to adduce in any shape Mr Adolphus's History, as competent evidence. There is no fact relating to the contest or negotiations of Great Britain with America, alluded to in that work, of which authentic evidence might not have been found in the Archives of the British Government, or been obtained, according to the Convention of 1827, from the Government of the United States.

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* "Silas Dean's intercepted letters."

† "From private information."